

SSB 6175 - H COMM AMD  
By Committee on Judiciary

ADOPTED 03/01/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "I. DEFINITIONS, APPLICABILITY, AND OTHER GENERAL PROVISIONS

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

6 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this  
7 section apply throughout this chapter unless the context clearly  
8 requires otherwise.

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

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

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

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

19 (iii) Controls in any manner the election or appointment of a  
20 majority of the directors, managing members, or general partners of  
21 the declarant; or

22 (iv) Has contributed more than twenty percent of the capital of  
23 the declarant.

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

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

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

1 (iii) Controls in any manner the election or appointment of a  
2 majority of the directors, managing members, or general partners of  
3 the person; or

4 (iv) Has contributed more than twenty percent of the capital of  
5 the person.

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

9 (2) "Allocated interests" means the following interests allocated  
10 to each unit:

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

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

15 (c) In a plat community and miscellaneous community, the common  
16 expense liability and the votes in the association, and also the  
17 undivided interest in the common elements if owned in common by the  
18 unit owners rather than an association.

19 (3) "Assessment" means all sums chargeable by the association  
20 against a unit, including any assessments levied pursuant to section  
21 317 of this act, fines or fees levied or imposed by the association  
22 pursuant to this chapter or the governing documents, interest and  
23 late charges on any delinquent account, and all costs of collection  
24 incurred by the association in connection with the collection of a  
25 delinquent owner's account, including reasonable attorneys' fees.

26 (4) "Association" or "unit owners association" means the unit  
27 owners association organized under section 301 of this act and, to  
28 the extent necessary to construe sections of this chapter made  
29 applicable to common interest communities pursuant to section 117,  
30 119, or 120 of this act, the association organized or created to  
31 administer such common interest communities.

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

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

37 (7) "Common elements" means:

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

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

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

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

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

13 (10) "Common interest community" means real estate described in a  
14 declaration with respect to which a person, by virtue of the person's  
15 ownership of a unit, is obligated to pay for a share of real estate  
16 taxes, insurance premiums, maintenance, or improvement of, or  
17 services or other expenses related to, common elements, other units,  
18 or other real estate described in the declaration. "Common interest  
19 community" does not include an arrangement described in section 123  
20 or 124 of this act. A common interest community may be a part of  
21 another common interest community.

22 (11) "Condominium" means a common interest community in which  
23 portions of the real estate are designated for separate ownership and  
24 the remainder of the real estate is designated for common ownership  
25 solely by the owners of those portions. A common interest community  
26 is not a condominium unless the undivided interests in the common  
27 elements are vested in the unit owners.

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

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

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

37 (ii) That at any time within the twelve months preceding the  
38 first acceptance of an agreement with the declarant to convey, or the  
39 first conveyance of, any unit in the building, whichever event  
40 occurred first, to any person who was not a declarant or dealer, or

1 affiliate of a declarant or dealer, was lawfully occupied wholly or  
2 partially by a tenant or subtenant for residential purposes pursuant  
3 to a rental agreement, oral or written, express or implied, who did  
4 not receive a condominium notice prior to entering into the rental  
5 agreement or lawfully taking occupancy, whichever event occurred  
6 first.

7 (b) A building in a common interest community is a conversion  
8 building only if:

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

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

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

19 (14) "Convey" or "conveyance" means, with respect to a unit, any  
20 transfer of ownership of the unit, including a transfer by deed or by  
21 real estate contract and, with respect to a unit in a leasehold  
22 common interest community or a proprietary lease in a cooperative, a  
23 transfer by lease or assignment of the unit, but does not include the  
24 creation, transfer, or release of a security interest.

25 (15) "Cooperative" means a common interest community in which the  
26 real estate is owned by an association, each member of which is  
27 entitled by virtue of the member's ownership interest in the  
28 association and by a proprietary lease to exclusive possession of a  
29 unit.

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

34 (17) "Declarant" means:

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

36 (b) Any person who reserves any special declarant right in a  
37 declaration;

38 (c) Any person who exercises special declarant rights or to whom  
39 special declarant rights are transferred of record. The holding or  
40 exercise of rights to maintain sales offices, signs advertising the

1 common interest community, and models, and related right of access,  
2 does not confer the status of being a declarant; or

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

9 (18) "Declarant control" means the right of the declarant or  
10 persons designated by the declarant to appoint or remove any officer  
11 or board member of the association or to veto or approve a proposed  
12 action of any board or association, pursuant to section 304(1)(a) of  
13 this act.

14 (19) "Declaration" means the instrument, however denominated,  
15 that creates a common interest community, including any amendments to  
16 the instrument.

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

19 (a) Add real estate or improvements to a common interest  
20 community;

21 (b) Create units, common elements, or limited common elements  
22 within a common interest community;

23 (c) Subdivide or combine units or convert units into common  
24 elements;

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

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

28 (21) "Effective age" means the difference between the useful life  
29 and remaining useful life.

30 (22) "Electronic transmission" or "electronically transmitted"  
31 means any electronic communication (a) not directly involving the  
32 physical transfer of a record in a tangible medium and (b) that may  
33 be retained, retrieved, and reviewed by the sender and the recipient  
34 of the communication, and that may be directly reproduced in a  
35 tangible medium by a sender and recipient.

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

1 (24) "Foreclosure" means a statutory forfeiture or a judicial or  
2 nonjudicial foreclosure of a security interest or a deed or other  
3 conveyance in lieu of a security interest.

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

10 (26) "Fully funded balance" means the current value of the  
11 deteriorated portion, not the total replacement value, of all the  
12 reserve components. The fully funded balance for each reserve  
13 component is calculated by multiplying the current replacement cost  
14 of that reserve component by its effective age, then dividing the  
15 result by that reserve component's useful life. The sum total of all  
16 reserve components' fully funded balances is the association's fully  
17 funded balance.

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

23 (28) "Identifying number" means a symbol or address that  
24 identifies only one unit or limited common element in a common  
25 interest community.

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

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

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

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

4 (33) "Miscellaneous community" means a common interest community  
5 in which units are lawfully created in a manner not inconsistent with  
6 chapter 58.17 RCW and that is not a condominium, cooperative, or plat  
7 community.

8 (34) "Nominal reserve costs" means that the current estimated  
9 total replacement costs of the reserve components are less than fifty  
10 percent of the annual budgeted expenses of the association, excluding  
11 contributions to the reserve fund, for a condominium or cooperative  
12 containing horizontal unit boundaries, and less than seventy-five  
13 percent of the annual budgeted expenses of the association, excluding  
14 contributions to the reserve fund, for all other common interest  
15 communities.

16 (35) "Organizational documents" means the instruments filed with  
17 the secretary of state to create an entity and the instruments  
18 governing the internal affairs of the entity including, but not  
19 limited to, any articles of incorporation, certificate of formation,  
20 bylaws, and limited liability company or partnership agreement.

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

26 (37) "Plat community" means a common interest community in which  
27 units have been created by subdivision or short subdivision as both  
28 are defined in RCW 58.17.020 and in which the boundaries of units are  
29 established pursuant to chapter 58.17 RCW.

30 (38) "Proprietary lease" means a written and recordable lease  
31 that is executed and acknowledged by the association as lessor and  
32 that otherwise complies with requirements applicable to a residential  
33 lease of more than one year and pursuant to which a member is  
34 entitled to exclusive possession of a unit in a cooperative. A  
35 proprietary lease governed under this chapter is not subject to  
36 chapter 59.18 RCW except as provided in the declaration.

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

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

4 (41) "Real estate" means any leasehold or other estate or  
5 interest in, over, or under land, including structures, fixtures, and  
6 other improvements and interests that by custom, usage, or law pass  
7 with a conveyance of land though not described in the contract of  
8 sale or instrument of conveyance. "Real estate" includes parcels with  
9 or without upper or lower boundaries and spaces that may be filled  
10 with air or water.

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

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

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

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

21 (46) "Reserve component" means a physical component of the common  
22 interest community which the association is obligated to maintain,  
23 repair, or replace, which has an estimated useful life of less than  
24 thirty years, and for which the cost of such maintenance, repair, or  
25 replacement is infrequent, significant, and impractical to include in  
26 an annual budget.

27 (47) "Reserve study professional" means an independent person who  
28 is suitably qualified by knowledge, skill, experience, training, or  
29 education to prepare a reserve study in accordance with sections 330  
30 and 331 of this act. For the purposes of this subsection,  
31 "independent" means a person who is not an employee, officer, or  
32 director, and has no pecuniary interest in the declarant,  
33 association, or any other party for whom the reserve study is  
34 prepared.

35 (48) "Residential purposes" means use for dwelling or  
36 recreational purposes, or both.

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



1 (50) "Security interest" means an interest in real estate or  
2 personal property, created by contract or conveyance that secures  
3 payment or performance of an obligation. "Security interest" includes  
4 a lien created by a mortgage, deed of trust, real estate contract,  
5 lease intended as security, assignment of lease or rents intended as  
6 security, pledge of an ownership interest in an association, and any  
7 other consensual lien or title retention contract intended as  
8 security for an obligation.

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

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

14 (b) Exercise any development right;

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

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

20 (e) Make the common interest community subject to a master  
21 association;

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

24 (g) Appoint or remove any officer or board member of the  
25 association or any master association or to veto or approve a  
26 proposed action of any board or association, pursuant to section  
27 304(1) of this act;

28 (h) Control any construction, design review, or aesthetic  
29 standards committee or process;

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

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

34 (52) "Specially allocated expense" means any expense of the  
35 association, including allocations to reserves, allocated to some or  
36 all of the unit owners pursuant to section 317 (4) through (8) of  
37 this act.

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

1 (54) "Tangible medium" means a writing, copy of a writing,  
2 facsimile, or a physical reproduction, each on paper or on other  
3 tangible material.

4 (55) "Timeshare" has the same meaning as defined in RCW  
5 64.36.010.

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

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

12 (b) If a unit in a cooperative is owned by a unit owner or is  
13 sold, conveyed, voluntarily or involuntarily encumbered, or otherwise  
14 transferred by a unit owner, the interest in that unit that is owned,  
15 sold, conveyed, encumbered, or otherwise transferred is the right to  
16 possession of that unit under a proprietary lease, coupled with the  
17 allocated interests of that unit, and the association's interest in  
18 that unit is not affected.

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

23 (58)(a) "Unit owner" means (i) a declarant or other person that  
24 owns a unit or (ii) a lessee of a unit in a leasehold common interest  
25 community whose lease expires simultaneously with any lease the  
26 expiration or termination of which will remove the unit from the  
27 common interest community, but does not include a person having an  
28 interest in a unit solely as security for an obligation.

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

31 (c) In a condominium, plat community, or miscellaneous community,  
32 the declarant is the unit owner of any unit created by the  
33 declaration. In a cooperative, the declarant is treated as the unit  
34 owner of any unit to which allocated interests have been allocated  
35 until that unit has been conveyed to another person.

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

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

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

1        NEW SECTION.    **Sec. 103.**    NO VARIATION BY AGREEMENT. Except as  
2 expressly provided in this chapter, the effect of the provisions of  
3 this chapter may not be varied by agreement, and rights conferred by  
4 this chapter may not be waived. Except as provided otherwise in  
5 section 123 of this act, a declarant may not act under a power of  
6 attorney, or use any other device, to evade the limitations or  
7 prohibitions of this chapter or the declaration.

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

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

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

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

19        (3) If a development right has an ascertainable market value, the  
20 development right constitutes a separate parcel of real estate for  
21 property tax purposes and must be separately taxed and assessed to  
22 the declarant, and the declarant alone is liable for payment of those  
23 taxes.

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

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

33        (2) A zoning, subdivision, or other land use statute, ordinance,  
34 or regulation may not prohibit the condominium or cooperative form of  
35 ownership or impose any requirement upon a condominium or cooperative  
36 that it would not impose upon a physically identical development  
37 under a different form of ownership.

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

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

10 (5) This section does not prohibit a county legislative authority  
11 from requiring the review and approval of declarations and amendments  
12 to declarations and of termination agreements executed pursuant to  
13 section 219(2) of this act by the county assessor solely for the  
14 purpose of allocating the assessed value and property taxes. The  
15 review by the assessor must be done in a reasonable and timely  
16 manner.

17 NEW SECTION. **Sec. 106.** EMINENT DOMAIN. (1) If a unit is  
18 acquired by condemnation or part of a unit is acquired by  
19 condemnation leaving the unit owner with a remnant that may not  
20 practically or lawfully be used for any purpose permitted by the  
21 declaration, the award must include compensation to the unit owner  
22 for that unit and its allocated interests, whether or not any common  
23 elements are acquired. Upon acquisition, unless the decree otherwise  
24 provides, that unit's allocated interests are automatically  
25 reallocated to the remaining units in proportion to the respective  
26 allocated interests of those units before the taking, and the  
27 association must promptly prepare, execute, and record an amendment  
28 to the declaration reflecting the reallocations. Any remnant of a  
29 unit remaining after part of a unit is taken under this subsection is  
30 thereafter a common element.

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

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

1 (b) The portion of the allocated interests divested from the  
2 partially acquired unit are automatically reallocated to that unit  
3 and to the remaining units in proportion to the respective allocated  
4 interests of those units before the taking, with the partially  
5 acquired unit participating in the reallocation on the basis of its  
6 reduced allocated interests.

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

12 (b) Unless the declaration or the decree provides otherwise, any  
13 portion of the award attributable to the acquisition of a limited  
14 common element must be equally divided among the owners of the units  
15 to which that limited common element was allocated at the time of  
16 acquisition.

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

19 NEW SECTION. **Sec. 107.** SUPPLEMENTAL GENERAL PRINCIPLES OF LAW  
20 APPLICABLE. The principles of law and equity, including the law of  
21 corporations and any other form of organization authorized by the law  
22 of this state and unincorporated associations, the law of real  
23 estate, and the law relative to the capacity to contract, principal  
24 and agent, eminent domain, estoppel, fraud, misrepresentation,  
25 duress, coercion, mistake, receivership, substantial performance, or  
26 other validating or invalidating cause supplement this chapter,  
27 except to the extent inconsistent with this chapter.

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

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

1        NEW SECTION.    **Sec. 110.**    SEVERABILITY. If any provision of this  
2 act or its application to any person or circumstance is held invalid,  
3 the remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 111.**    UNCONSCIONABLE AGREEMENT OR TERM OF  
6 CONTRACT. (1) The court, upon finding as a matter of law that a  
7 contract or contract clause was unconscionable at the time the  
8 contract was made, may refuse to enforce the contract, enforce the  
9 remainder of the contract without the unconscionable clause, or limit  
10 the application of any unconscionable clause to avoid an  
11 unconscionable result.

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

16        (a) The commercial setting of the negotiations;

17        (b) Whether a party has knowingly taken advantage of the  
18 inability of the other party reasonably to protect his or her  
19 interests by reason of physical or mental infirmity, illiteracy,  
20 inability to understand the language of the agreement, or similar  
21 factors;

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

23        (d) If a sale, any gross disparity at the time of contracting  
24 between the amount charged for the property and the value of that  
25 property measured by the price at which similar property was readily  
26 obtainable in similar transactions. A disparity between the contract  
27 price and the value of the property measured by the price at which  
28 similar property was readily obtainable in similar transactions does  
29 not, of itself, render the contract unconscionable.

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

33        NEW SECTION.    **Sec. 113.**    REMEDIES TO BE LIBERALLY ADMINISTERED.  
34 The remedies provided under this chapter must be liberally  
35 administered to the end that the aggrieved party is put in as good a  
36 position as if the other party had fully performed. However,

1 consequential, special, or punitive damages may not be awarded except  
2 as specifically provided in this chapter or by other rule of law.

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

12 (2) The dollar amounts specified in sections 116 and 409(2) of  
13 this act and any amount stated in the declaration pursuant to  
14 sections 116 and 409(2) of this act must change on July 1st of each  
15 year if the percentage of change, calculated to the nearest whole  
16 percentage point, between the index at the end of the preceding year  
17 and the reference base index, is ten percent or more, but: (a) The  
18 portion of the percentage change in the index in excess of a multiple  
19 of ten percent must be disregarded and the dollar amount may only  
20 change in multiples of ten percent of the amount appearing in this  
21 chapter on the effective date of this section; (b) the dollar amount  
22 must not change if the amount required under this section is that  
23 currently in effect pursuant to this chapter as a result of earlier  
24 application of this section; and (c) the dollar amount must not be  
25 reduced below the amount appearing in this chapter on the effective  
26 date of this section.

27 (3) If the index is revised after December 1979, the percentage  
28 of change pursuant to this section must be calculated on the basis of  
29 the revised index. If the revision of the index changes the reference  
30 base index, a revised reference base index must be determined by  
31 multiplying the reference base index then applicable by the rebasing  
32 factor furnished by the bureau of labor statistics. If the index is  
33 superseded, the index referred to in this section is the one  
34 represented by the bureau of labor statistics as reflecting most  
35 accurately the changes in the purchasing power of the dollar for  
36 consumers.

37 NEW SECTION. **Sec. 115.** RELATION TO ELECTRONIC SIGNATURES IN  
38 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and

1 supersedes the federal electronic signatures in global and national  
2 commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify,  
3 limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic  
4 delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

5 NEW SECTION. **Sec. 116.** APPLICABILITY TO NEW COMMON INTEREST  
6 COMMUNITIES. (1) Except as provided otherwise in this section, this  
7 chapter applies to all common interest communities created within  
8 this state after the effective date of this section. Chapters 59.18,  
9 64.32, 64.34, and 64.38 RCW do not apply to common interest  
10 communities created after the effective date of this section.

11 (2) Unless the declaration provides that this entire chapter is  
12 applicable, a plat community or miscellaneous community that is not  
13 subject to any development right is subject only to sections 104,  
14 105, and 106 of this act, if the community: (a) Contains no more than  
15 twelve units; and (b) provides in its declaration that the annual  
16 average assessment of all units restricted to residential purposes,  
17 exclusive of optional user fees and any insurance premiums paid by  
18 the association, may not exceed three hundred dollars, as adjusted  
19 pursuant to section 114 of this act.

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

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

25 (b) The declaration provides that the assessment may not be  
26 increased above the limitation in subsection (2) of this section  
27 prior to the transition meeting without the consent of unit owners,  
28 other than the declarant, holding ninety percent of the votes in the  
29 association.

30 NEW SECTION. **Sec. 117.** APPLICABILITY TO PREEXISTING COMMON  
31 INTEREST COMMUNITIES. (1) Except for a nonresidential common interest  
32 community described in section 121 of this act, sections 120 and 326  
33 of this act apply, and any inconsistent provisions of chapter 59.18,  
34 64.32, 64.34, or 64.38 RCW do not apply, to a common interest  
35 community created in this state before the effective date of this  
36 section.

37 (2) Except to the extent provided in this subsection, the  
38 sections listed in subsection (1) of this section apply only to



1 events and circumstances occurring after the effective date of this  
2 section and do not invalidate existing provisions of the governing  
3 documents of those common interest communities. To protect the public  
4 interest, sections 120 and 326 of this act supersede existing  
5 provisions of the governing documents of all plat communities and  
6 miscellaneous communities previously subject to chapter 64.38 RCW.

7 NEW SECTION. **Sec. 118.** APPLICABILITY OF AMENDMENTS TO NEW  
8 COMMON INTEREST COMMUNITIES. Amendments to this chapter apply to all  
9 common interest communities except those that (1) were created prior  
10 to the effective date of this section and (2) have not subsequently  
11 amended their governing documents to provide that this chapter will  
12 apply to the common interest community pursuant to section 120 of  
13 this act.

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

18 NEW SECTION. **Sec. 120.** ELECTION OF PREEXISTING COMMON INTEREST  
19 COMMUNITIES TO BE GOVERNED BY THIS CHAPTER. (1) The declaration of  
20 any common interest community created before the effective date of  
21 this section may be amended to provide that this chapter will apply  
22 to the common interest community, regardless of what applicable law  
23 provided before this act was adopted.

24 (2) Except as provided otherwise in subsection (3) of this  
25 section or in section 218 (9), (10), or (11) of this act, an  
26 amendment to the governing documents authorized under this section  
27 must be adopted in conformity with any procedures and requirements  
28 for amending the instruments specified by those instruments and in  
29 conformity with the amendment procedures of this chapter. If the  
30 governing documents do not contain provisions authorizing amendment,  
31 the amendment procedures of this chapter apply. If an amendment  
32 grants to a person a right, power, or privilege permitted under this  
33 chapter, any correlative obligation, liability, or restriction in  
34 this chapter also applies to the person.

35 (3) Notwithstanding any provision in the governing documents of a  
36 common interest community that govern the procedures and requirements

1 for amending the governing documents, an amendment under subsection  
2 (1) of this section may be made as follows:

3 (a) The board shall propose such amendment to the owners if the  
4 board deems it appropriate or if owners holding twenty percent or  
5 more of the votes in the association request such an amendment in  
6 writing to the board;

7 (b) Upon satisfaction of the foregoing requirements, the board  
8 shall prepare a proposed amendment and shall provide the owners with  
9 a notice in a record containing the proposed amendment and at least  
10 thirty days' advance notice of a meeting to discuss the proposed  
11 amendment;

12 (c) Following such meeting, the board shall provide the owners  
13 with a notice in a record containing the proposed amendment and a  
14 ballot to approve or reject the amendment;

15 (d) The amendment shall be deemed approved if owners holding at  
16 least thirty percent of the votes in the association participate in  
17 the voting process, and at least sixty-seven percent of the votes  
18 cast by participating owners are in favor of the proposed amendment.

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

24 (a) This entire chapter applies to the community;

25 (b) Sections 101 through 226 of this act apply to the community;  
26 or

27 (c) Only sections 104, 105, and 106 of this act apply to the  
28 community.

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

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

37 (a) Any management, maintenance, operations, or employment  
38 contract, lease of recreational or parking areas or facilities, and  
39 any other contract or lease between the association and a declarant

1 or an affiliate of a declarant continues in force after the declarant  
2 turns over control of the association; and

3 (b) Purchasers of units must execute proxies, powers of attorney,  
4 or similar devices in favor of the declarant regarding particular  
5 matters enumerated in those instruments.

6 (4) A common interest community that contains both units  
7 restricted to nonresidential purposes and units that may be used for  
8 residential purposes is not subject to this chapter unless the units  
9 that may be used for residential purposes would comprise a common  
10 interest community subject to this chapter in the absence of such  
11 nonresidential units or the declaration provides that this chapter  
12 applies as provided in subsection (2) or (3) of this section.

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

16 NEW SECTION. **Sec. 123.** OTHER EXEMPT REAL ESTATE ARRANGEMENTS.

17 (1) An arrangement between the associations for two or more common  
18 interest communities to share the costs of real estate taxes,  
19 insurance premiums, services, maintenance or improvements of real  
20 estate, or other activities specified in their arrangement or  
21 declarations does not create a separate common interest community.

22 (2) An arrangement between an association for a common interest  
23 community and the owner of real estate that is not part of a common  
24 interest community to share the costs of real estate taxes, insurance  
25 premiums, services, maintenance or improvements of real estate, or  
26 other activities specified in their arrangement does not create a  
27 separate common interest community. However, costs payable by the  
28 common interest community as a result of the arrangement must be  
29 included in the periodic budget for the common interest community,  
30 and the arrangement must be disclosed in all public offering  
31 statements and resale certificates required under this chapter.

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

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

6 **II. CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST**  
7 **COMMUNITIES**

8 NEW SECTION. **Sec. 201.** CREATION OF COMMON INTEREST COMMUNITIES.  
9 (1)(a) A common interest community may be created under this chapter  
10 only by (i) recording a declaration executed in the same manner as a  
11 deed, and (ii) recording a map pursuant to section 210(3) of this  
12 act, and (iii) with respect to a cooperative, conveying the real  
13 estate subject to that declaration to the association.

14 (b) The declaration and map must be recorded in every county in  
15 which any portion of the common interest community is located. The  
16 name of a condominium must not be identical to the name of any other  
17 existing condominium or plat community, whether created under this  
18 chapter or chapter 64.32 or 64.34 RCW, in any county in which the  
19 condominium is located.

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

24 (3)(a) Except as provided otherwise in the declaration or map,  
25 if, in a common interest community other than a condominium or  
26 cooperative, real estate described as a common element in the  
27 declaration or map is not conveyed to the association or expressly  
28 dedicated in the declaration or map to the unit owners as tenants in  
29 common, that real estate is deemed to be conveyed to the association  
30 at the time the first unit is conveyed, subject to the authority and  
31 jurisdiction of the association and subject to development rights, if  
32 any, reserved in the declaration.

33 (b) Except as provided otherwise in the declaration or map, in  
34 the event of the dissolution of an association, any real estate owned  
35 by the association vests in the unit owners as tenants in common with  
36 each unit owner's interest being determined in accordance with the  
37 provisions of section 219 of this act regarding a termination of the  
38 common interest community.

1        NEW SECTION.    **Sec. 202.**    RESERVATION OF NAME. Upon the filing of  
2 a written request with the county office in which the declaration is  
3 to be recorded, using a form of written request as may be required by  
4 the county office and paying a fee as the county office may establish  
5 not in excess of fifty dollars, a person may reserve the exclusive  
6 right to use a particular name for a condominium to be created in  
7 that county. The reserved name must not be identical to any other  
8 condominium or plat community located in that county. The name  
9 reservation expires unless within three hundred sixty-five days from  
10 the date on which the name reservation is filed the person reserving  
11 that name either records a declaration using the reserved name or  
12 files a new name reservation request.

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

16        (a) If walls, floors, or ceilings are designated as boundaries of  
17 a unit, all lath, furring, wallboard, plasterboard, plaster,  
18 paneling, tiles, wallpaper, paint, finished flooring, and any other  
19 materials constituting any part of the finished surfaces thereof are  
20 a part of the unit, and all other portions of the walls, floors, or  
21 ceilings are a part of the common elements.

22        (b) If any chute, flue, duct, wire, conduit, bearing wall,  
23 bearing column, or any other fixture lies partially within and  
24 partially outside the designated boundaries of a unit, any portion  
25 thereof serving only that unit is a limited common element allocated  
26 solely to that unit, and any portion thereof serving more than one  
27 unit or any portion of the common elements is a part of the common  
28 elements.

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

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

37        NEW SECTION.    **Sec. 204.**    CONSTRUCTION AND VALIDITY OF GOVERNING  
38 DOCUMENTS. (1) All provisions of the governing documents are

1 severable. If any provision of a governing document, or its  
2 application to any person or circumstances, is held invalid, the  
3 remainder of the governing document or application to other persons  
4 or circumstances is not affected.

5 (2) The rule against perpetuities may not be applied to defeat  
6 any provision of the governing documents adopted pursuant to section  
7 302(1)(a) of this act.

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

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

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

32 NEW SECTION. **Sec. 205.** DESCRIPTION OF UNITS. (1) In a  
33 condominium or a cooperative, a description of a unit that sets forth  
34 the name of the common interest community, the recording data for the  
35 declaration, the county and state in which the common interest  
36 community is located, and the identifying number of the unit is a  
37 legally sufficient description of that unit and all rights,  
38 obligations, and interests appurtenant to that unit that were created  
39 by the governing documents.

1 (2) In a plat community or miscellaneous community, a description  
2 of a unit that sets forth the name of the common interest community,  
3 the recording data for the map, the county and state in which the  
4 common interest community is located, and the identifying number of  
5 the unit is a legally sufficient description of that unit and all  
6 rights, obligations, and interests appurtenant to that unit.

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

9 (a) The names of the common interest community and the  
10 association and, immediately following the initial recital of the  
11 name of the community, a statement that the common interest community  
12 is a condominium, cooperative, plat community, or miscellaneous  
13 community;

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

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

19 (d) In all common interest communities, a reference to the  
20 recorded map creating the units and common elements, if any, subject  
21 to the declaration, and in a common interest community other than a  
22 plat community, the identifying number of each unit created by the  
23 declaration, a description of the boundaries of each unit if and to  
24 the extent they are different from the boundaries stated in section  
25 203(1)(a) of this act, and with respect to each existing unit, and if  
26 known at the time the declaration is recorded, the (i) approximate  
27 square footage, (ii) number of whole or partial bathrooms, (iii)  
28 number of rooms designated primarily as bedrooms, and (iv) level or  
29 levels on which each unit is located. The data described in this  
30 subsection (1)(d)(ii) and (iii) may be omitted with respect to units  
31 restricted to nonresidential use;

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

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

38 (g) A description of any development right and any other special  
39 declarant rights reserved by the declarant, and, if the boundaries of

1 the real estate subject to those rights are fixed in the declaration  
2 pursuant to (h)(i) of this subsection, a description of the real  
3 property affected by those rights, and a time limit within which each  
4 of those rights must be exercised;

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

8 (i) Either a statement fixing the boundaries of those portions  
9 and regulating the order in which those portions may be subjected to  
10 the exercise of each development right or a statement that no  
11 assurances are made in those regards; and

12 (ii) A statement as to whether, if any development right is  
13 exercised in any portion of the real estate subject to that  
14 development right, that development right must be exercised in all or  
15 in any other portion of the remainder of that real estate;

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

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

20 (k) Any restrictions on alienation of the units, including any  
21 restrictions on leasing that exceed the restrictions on leasing units  
22 that boards may impose pursuant to section 323(9)(c) of this act and  
23 on the amount for which a unit may be sold or on the amount that may  
24 be received by a unit owner on sale, condemnation, or casualty loss  
25 to the unit or to the common interest community, or on termination of  
26 the common interest community;

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

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

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

34 (2) All amendments to the declaration must contain a cross-  
35 reference by recording number to the declaration and to any prior  
36 amendments to the declaration. All amendments to the declaration  
37 adding units must contain a cross-reference by recording number to  
38 the map relating to the added units and set forth all information  
39 required under subsection (1) of this section with respect to the  
40 added units.



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

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

6 (1) Any lease the expiration or termination of which may terminate  
7 the common interest community or reduce its size, or a memorandum of  
8 the lease, must be recorded. Every lessor of these leases in a  
9 condominium, plat community, or miscellaneous community must sign the  
10 declaration. The declaration must state:

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

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

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

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

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

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

25 (2) The declaration may provide for the collection by the  
26 association of the proportionate rents paid on the lease by the unit  
27 owners and may designate the association as the representative of the  
28 unit owners on all matters relating to the lease.

29 (3) After the declaration for a condominium, miscellaneous  
30 community, or plat community is recorded, neither the lessor nor the  
31 lessor's successor in interest may terminate the leasehold interest  
32 of a unit owner who makes timely payment of a unit owner's share of  
33 the rent and otherwise complies with all covenants that, if violated,  
34 would entitle the lessor to terminate the lease. A unit owner's  
35 leasehold interest in a condominium, miscellaneous community, or plat  
36 community is not affected by failure of any other person to pay rent  
37 or fulfill any other covenant.

38 (4) Acquisition of the leasehold interest of any unit owner by  
39 the owner of the reversion or remainder does not merge the leasehold

1 and fee simple interests unless the leasehold interests of all unit  
2 owners subject to that reversion or remainder are acquired and the  
3 owner of the reversion or remainder records a document confirming the  
4 merger.

5 (5) If the expiration or termination of a lease decreases the  
6 number of units in a common interest community, the allocated  
7 interests must be reallocated in accordance with section 106(1) of  
8 this act as though those units had been taken by condemnation.  
9 Reallocations must be confirmed by an amendment to the declaration  
10 and map prepared, executed, and recorded by the association.

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

12 The declaration must allocate to each unit:

13 (a) In a condominium, a fraction or percentage of undivided  
14 interests in the common elements and in the common expenses of the  
15 association and a portion of the votes in the association;

16 (b) In a cooperative, an ownership interest in the association, a  
17 fraction or percentage of the common expenses of the association, and  
18 a portion of the votes in the association; and

19 (c) In a plat community and miscellaneous community, a fraction  
20 or percentage of the common expenses of the association and a portion  
21 of the votes in the association.

22 (2) The declaration must state the formulas used to establish  
23 allocations of interests. Those allocations may not discriminate in  
24 favor of units owned by the declarant or an affiliate of the  
25 declarant.

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

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

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

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

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

37 (b) A declarant may not utilize cumulative or class voting for  
38 the purpose of evading any limitation imposed on declarants under

1 this chapter, and units do not constitute a class because they are  
2 owned by a declarant.

3 (5) Except for minor variations due to rounding, the sum of the  
4 common expense liabilities and, in a condominium, the sum of the  
5 undivided interests in the common elements allocated at any time to  
6 all the units must each equal one if stated as a fraction or one  
7 hundred percent if stated as a percentage. In the event of  
8 discrepancy between an allocated interest and the result derived from  
9 application of the pertinent formula, the allocated interest  
10 prevails.

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

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

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

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

27 (2)(a) Except in the case of a reallocation being made by a  
28 declarant pursuant to a development right reserved in the  
29 declaration, a limited common element may be reallocated between  
30 units only with the approval of the board and by an amendment to the  
31 declaration executed by the unit owners between or among whose units  
32 the reallocation is made.

33 (b) The board must approve the request of the unit owner or  
34 owners under this subsection (2) within thirty days, or within such  
35 other period provided by the declaration, unless the proposed  
36 reallocation does not comply with this chapter or the declaration.  
37 The failure of the board to act upon a request within such period is  
38 deemed an approval of the request.

1 (c) The amendment must be executed and recorded by the  
2 association and be recorded in the name of the common interest  
3 community.

4 (3) Unless provided otherwise in the declaration, the unit owners  
5 of units to which at least sixty-seven percent of the votes are  
6 allocated, including the unit owner of the unit to which the common  
7 element or limited common element will be assigned or incorporated,  
8 must agree to reallocate a common element as a limited common element  
9 or to incorporate a common element or a limited common element into  
10 an existing unit. Such reallocation or incorporation must be  
11 reflected in an amendment to the declaration and the map.

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

15 (2) With the exception of subsections (1), (3), (4), and (14) of  
16 this section, this section does not apply to a plat as defined in RCW  
17 58.17.020.

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

21 (4) An amendment to a map for a common interest community must be  
22 executed by the same party or parties authorized or required to  
23 execute an amendment to the declaration, contain cross-references by  
24 recording number to the declaration and any amendments to the  
25 declaration, and be recorded concurrently with an amendment to the  
26 declaration. With respect to a plat community, (a) any amendment to  
27 the map must be prepared and recorded in compliance with the  
28 requirements, processes, and procedures in chapter 58.17 RCW and of  
29 the local subdivision ordinances of the city, town, or county in  
30 which the plat community is located, and (b) any amendment to the  
31 declaration must conform to the map as so approved and recorded.

32 (5) A map for a cooperative may be prepared by a licensed land  
33 surveyor, and may be incorporated into the declaration to satisfy  
34 subsection (3) of this section and section 206(1)(d) of this act. If  
35 the map for a cooperative is not prepared by a licensed land  
36 surveyor, the map need not contain the certification required in  
37 subsection (6)(a) of this section.

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

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

3 SURVEYOR CERTIFICATE: This map correctly represents a survey made  
4 by me or under my direction in conformance with the requirements of  
5 the Survey Recording Act at the request of ..... (name of party  
6 requesting the survey) on ..... (date). I hereby certify that this  
7 map for ..... (name of common interest community) is based upon an  
8 actual survey of the property herein described; that the bearings and  
9 distances are correctly shown; that all information required by the  
10 Washington Uniform Common Interest Ownership Act is supplied herein;  
11 and that all horizontal and vertical boundaries of the units, (1) to  
12 the extent determined by the walls, floors, or ceilings thereof, or  
13 other physical monuments, are substantially completed in accordance  
14 with said map, or (2) to the extent such boundaries are not defined  
15 by physical monuments, such boundaries are shown on the map.  
16 (Surveyor's name, signature, license or certificate number, and  
17 acknowledgment)

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

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

31 (c) A declaration by the declarant in substantially the following  
32 form:

33 DECLARANT DECLARATION: The undersigned owner or owners of the  
34 interest in the real estate described herein hereby declare this map  
35 and dedicate the same for a common interest community named .....  
36 (name of common interest community), a ..... (type of community), as  
37 that term is defined in the Washington Uniform Common Interest  
38 Ownership Act, solely to meet the requirements of the Washington

1 Uniform Common Interest Ownership Act and not for any public purpose.  
2 This map and any portion thereof is restricted by law and the  
3 Declaration for ..... (name of common interest community), recorded  
4 under (name of county in which the common interest community is  
5 located) County Recording No. .... (recording number). (Declarant's  
6 name, signature, and acknowledgment)

7 (7) Each map filed for a common interest community, and any  
8 amendments to the map, must be in the style, size, form, and quality  
9 as prescribed by the recording authority of the county where filed,  
10 and a copy must be delivered to the county assessor.

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

14 (a) The name of the common interest community and, immediately  
15 following the name of the community, a statement that the common  
16 interest community is a condominium, cooperative, or miscellaneous  
17 community as defined in this chapter. A local jurisdiction may also  
18 require that the name of a plat community on the survey, plat, or map  
19 be followed by a statement that the common interest community is a  
20 plat community as defined in this chapter;

21 (b) A legal description of the land in the common interest  
22 community;

23 (c) As to a condominium, a survey of the land in the condominium,  
24 and as to a cooperative, a survey or a drawing of the land included  
25 in the entire cooperative that complies with the other requirements  
26 of this section;

27 (d) If the boundaries of land subject to the development right to  
28 withdraw are fixed in the declaration or an amendment to the  
29 declaration pursuant to section 206(1)(h)(i) of this act, and subject  
30 to the provisions of the declaration, an amendment to the map if not  
31 contained in the initial recorded map, the legal description and  
32 boundaries of that land, labeled "MAY BE WITHDRAWN FROM THE [COMMON  
33 INTEREST COMMUNITY];

34 (e) If the boundaries of land subject to the development right to  
35 add units that will result in the reallocation of allocated interests  
36 is fixed in the declaration or an amendment to the declaration  
37 pursuant to section 206(1)(h)(i) of this act, and subject to the  
38 provisions of the declaration, the legal description and boundaries

1 of that land, labeled "SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS  
2 THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS";

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

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

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

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

12 (j) The location with reference to an established datum of  
13 horizontal unit boundaries. With respect to a cooperative,  
14 miscellaneous community, or condominium for which the horizontal  
15 boundaries are not defined by physical monuments, reference to an  
16 established datum is not required if the location of the horizontal  
17 boundaries of a unit is otherwise reasonably described or depicted;

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

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

23 (m) The general location of any existing principal common  
24 amenities listed in a public offering statement under section  
25 403(1)(k) of this act;

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

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

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

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

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

5 (12) Upon exercising any development right, the declarant must  
6 record either new maps necessary to conform to the requirements of  
7 subsections (3), (4), (6), and (8) of this section, or new  
8 certifications of any map previously recorded if that map otherwise  
9 conforms to the requirements of subsections (3), (4), (6), and (8) of  
10 this section.

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

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

21 (15) In showing or projecting the location and dimensions of the  
22 vertical boundaries of a unit located in a building, it is not  
23 necessary to show the thickness of the walls constituting the  
24 vertical boundaries or otherwise show the distance of those vertical  
25 boundaries either from the exterior surface of the building  
26 containing that unit or from adjacent vertical boundaries of other  
27 units if: (a) The walls are designated to be the vertical boundaries  
28 of that unit; (b) the unit is located within a building, the location  
29 and dimensions of the building having been shown on the map under  
30 subsection (8)(f) of this section; and (c) the graphic general  
31 location of the vertical boundaries are shown in relation to the  
32 exterior surfaces of that building and to the vertical boundaries of  
33 other units within that building.

34 NEW SECTION. **Sec. 211.** EXERCISE OF DEVELOPMENT RIGHTS. (1) To  
35 exercise any development right reserved under section 206(1)(h) of  
36 this act, the declarant must prepare, execute, and record any  
37 amendments to the declaration and map in accordance with the  
38 requirements of sections 210 and 218(3) of this act. The declarant is  
39 the unit owner of any units created. The amendment to the declaration



1 must assign an identifying number to each new unit created and,  
2 except in the case of subdivision, combination, or conversion of  
3 units described in subsection (3) of this section, reallocate the  
4 allocated interests among all units. The amendment must describe any  
5 common elements and any limited common elements created and, in the  
6 case of limited common elements, designate the unit to which each is  
7 allocated to the extent required under section 209 of this act. The  
8 amendments are effective upon recording.

9 (2) Development rights may be reserved within any real estate  
10 added to the common interest community if the amendment to the  
11 declaration adding that real estate includes all matters required  
12 under sections 206 and 207 of this act and the amendment to the map  
13 includes all matters required under section 210 of this act. This  
14 subsection does not extend the time limit on the exercise of  
15 development rights imposed by the declaration pursuant to section  
16 206(1)(h) of this act.

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

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

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

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

32 (a) If all the real estate is subject to withdrawal, and the  
33 declaration or map or amendment to the declaration or map does not  
34 describe separate portions of real estate subject to that right, none  
35 of the real estate may be withdrawn if a unit in that real estate has  
36 been conveyed to a purchaser; or

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

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

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

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

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

18 (2) May not change the appearance of the common elements without  
19 approval of the board;

20 (3) After acquiring an adjoining unit or an adjoining part of an  
21 adjoining unit, with approval of the board, may remove or alter any  
22 intervening partition or create apertures in the unit or adjoining  
23 unit, even if the partition in whole or in part is a common element.  
24 The removal of partitions or creation of apertures under this  
25 subsection is not an alteration of boundaries. The board must approve  
26 a unit owner's request, which must include the plans and  
27 specifications for the proposed removal or alteration, under this  
28 subsection (3) after receipt of all required information unless the  
29 proposed alteration does not comply with this section or the  
30 governing documents; and

31 (4) May eliminate the title to a mobile home or manufactured home  
32 within the unit as permitted under chapter 65.20 RCW without the  
33 consent or joinder by the association, any other unit owner, or any  
34 party having a security interest in any other unit or the common  
35 elements.

36 NEW SECTION. **Sec. 213.** RELOCATION OF UNIT BOUNDARIES. (1)  
37 Subject to the provisions of the declaration, section 212 of this  
38 act, and other provisions of law, the boundaries between adjoining

1 units may be relocated upon application to the board by the unit  
2 owners of those units and upon approval by the board pursuant to this  
3 section. The application must include plans showing the relocated  
4 boundaries and such other information as the board may require. If  
5 the unit owners of the adjoining units have specified a reallocation  
6 between their units of their allocated interests, the application  
7 must state the proposed reallocations. Unless the board determines,  
8 after receipt of all required information, that the reallocations are  
9 unreasonable or that the proposed boundary relocation does not comply  
10 with the declaration, section 212 of this act, or other provisions of  
11 law, the board must approve the application and prepare any  
12 amendments to the declaration and map in accordance with the  
13 requirements of subsection (3) of this section.

14 (2)(a) Subject to the provisions of the declaration and other  
15 provisions of law, boundaries between units and common elements may  
16 be relocated to incorporate common elements within a unit by an  
17 amendment to the declaration upon application to the association by  
18 the unit owner of the unit who proposes to relocate a boundary. The  
19 amendment may be approved only if the unit owner of the unit, the  
20 boundary of which is being relocated, and, unless the declaration  
21 provides otherwise, persons entitled to cast at least sixty-seven  
22 percent of the votes in the association, including sixty-seven  
23 percent of the votes allocated to units not owned by the declarant,  
24 agree.

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

29 (3)(a) The association must prepare any amendment to the  
30 declaration in accordance with the requirements of section 206 of  
31 this act and any amendment to the map in accordance with the  
32 requirements of section 210 of this act necessary to show or describe  
33 the altered boundaries of affected units and their dimensions and  
34 identifying numbers.

35 (b) The amendment to the declaration must be executed by the unit  
36 owner of the unit, the boundaries of which are being relocated, and  
37 by the association, contain words of conveyance between them, and be  
38 recorded in the names of the unit owner or owners and the  
39 association, as grantor or grantee, as appropriate and as required

1 under section 218(3) of this act. The amendments are effective upon  
2 recording.

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

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

8 (1) Unless prohibited in the declaration, subject to the provisions  
9 of the declaration, section 212 of this act, and other provisions of  
10 law, a unit may be subdivided into two or more units upon application  
11 to the association by the unit owner of the unit and upon approval by  
12 the board pursuant to this section. The application must include  
13 plans showing the relocated boundaries, a reallocation of all the  
14 allocated interests of the units among the units created by the  
15 subdivision, and such other information as the board may require.  
16 Unless the board determines, after receipt of all required  
17 information, that the reallocations are unreasonable or that the  
18 proposed boundary relocation does not comply with the declaration,  
19 sections 209 and 212 of this act, or other provisions of law, the  
20 board must approve the application and prepare any amendments to the  
21 declaration and map in accordance with the requirements of subsection  
22 (4) of this section.

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

38 (3) The association may require payment to the association of a  
39 one-time fee or charge or continuing fees or charges payable by the

1 owners of the units whose boundaries are being relocated to include  
2 common elements.

3 (4) The association must prepare, execute, and record any  
4 amendments to the declaration and, in a condominium, cooperative, or  
5 miscellaneous community, the map, prepared in accordance with the  
6 requirements of sections 210 and 218(3) of this act, subdividing or  
7 combining those units. The amendment to the declaration must be  
8 executed by the association and unit owner or owners of the units  
9 from which the subdivided or combined unit or units are derived,  
10 assign an identifying number to each resulting unit, and reallocate  
11 the allocated interests formerly allocated to the unit from which a  
12 combination was derived to the new unit or, if two or more units are  
13 derived from such combination, among the new units in any reasonable  
14 manner prescribed by such owners in the amendment or on any other  
15 basis the declaration requires. The amendments are effective upon  
16 recording.

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

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

24 NEW SECTION. **Sec. 215.** MONUMENTS AS BOUNDARIES. (1) The  
25 physical boundaries of a unit located in a building containing or  
26 comprising that unit constructed or reconstructed in substantial  
27 accordance with the map, or amendment to the map, are its boundaries  
28 rather than any boundaries shown on the map, regardless of settling  
29 or lateral movement of the unit or of any building containing or  
30 comprising the unit, or of any minor variance between boundaries of  
31 the unit or any building containing or comprising the unit shown on  
32 the map.

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

36 NEW SECTION. **Sec. 216.** USE FOR SALES PURPOSES. (1) A declarant  
37 may maintain sales offices, management offices, and models in units  
38 or on common elements in the common interest community only if the

1 declaration so provides. In a cooperative or condominium, any sales  
2 office, management office, or model not designated a unit by the  
3 declaration is a common element.

4 (2) When a declarant no longer owns a unit or has the right to  
5 create a unit in the common interest community, the declarant ceases  
6 to have any rights under this section unless the unit is removed  
7 promptly from the common interest community in accordance with a  
8 right to remove reserved in the declaration.

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

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

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

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

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

26 NEW SECTION. **Sec. 218.** AMENDMENT OF DECLARATION. (1)(a) Except  
27 in cases of amendments that may be executed by: A declarant under  
28 subsection (10) of this section, sections 209(2), 210(12), 211, or  
29 304(2)(d) of this act; the association under section 106, 207(5),  
30 209(3), 213(1), or 214 of this act or subsection (11) of this  
31 section; or certain unit owners under section 209(2), 213(1), 214(2),  
32 or 219(2) of this act, and except as limited by subsections (4), (6),  
33 (7), (8), and (12) of this section, the declaration may be amended  
34 only by vote or agreement of unit owners of units to which at least  
35 sixty-seven percent of the votes in the association are allocated,  
36 unless the declaration specifies a different percentage not to exceed  
37 ninety percent for all amendments or for specific subjects of  
38 amendment. For purposes of this section, "amendment" means any change

1 to the declaration, including adding, removing, or modifying  
2 restrictions contained in a declaration.

3 (b) If the declaration requires the approval of another person as  
4 a condition of its effectiveness, the amendment is not valid without  
5 that approval; however, any right of approval may not result in an  
6 expansion of special declarant rights reserved in the declaration or  
7 violate any other section of this chapter, including sections 103,  
8 111, 112, and 113 of this act.

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

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

19 (4) Except to the extent expressly permitted or required under  
20 this chapter, an amendment may not create or increase special  
21 declarant rights, increase the number of units, change the boundaries  
22 of any unit, or change the allocated interests of a unit without the  
23 consent of unit owners to which at least ninety percent of the votes  
24 in the association are allocated, including the consent of any unit  
25 owner of a unit, the boundaries of which or allocated interest of  
26 which is changed by the amendment.

27 (5) Amendments to the declaration required to be executed by the  
28 association must be executed by any authorized officer of the  
29 association who must certify in the amendment that it was properly  
30 adopted.

31 (6) The declaration may require a higher percentage of unit owner  
32 approval for an amendment that is intended to prohibit or materially  
33 restrict the uses of units permitted under the applicable zoning  
34 ordinances, or to protect the interests of members of a defined class  
35 of owners, or to protect other legitimate interests of the  
36 association or its members. Subject to subsection (13) of this  
37 section, a declaration may not require, as a condition for amendment,  
38 approval by more than ninety percent of the votes in the association  
39 or by all but one unit owner, whichever is less. An amendment

1 approved under this subsection must provide reasonable protection for  
2 a use permitted at the time the amendment was adopted.

3 (7) The time limits specified in the declaration pursuant to  
4 section 206(1)(g) of this act within which reserved development  
5 rights must be exercised may be extended, and additional development  
6 rights may be created, if persons entitled to cast at least eighty  
7 percent of the votes in the association, including eighty percent of  
8 the votes allocated to units not owned by the declarant, agree to  
9 that action. The agreement is effective thirty days after an  
10 amendment to the declaration reflecting the terms of the agreement is  
11 recorded unless all the persons holding the affected special  
12 declarant rights, or security interests in those rights, record a  
13 written objection within the thirty-day period, in which case the  
14 amendment is void, or consent in writing at the time the amendment is  
15 recorded, in which case the amendment is effective when recorded.

16 (8) A provision in the declaration creating special declarant  
17 rights that have not expired may not be amended without the consent  
18 of the declarant.

19 (9) If any provision of this chapter or the declaration requires  
20 the consent of a holder of a security interest in a unit as a  
21 condition to the effectiveness of an amendment to the declaration,  
22 the consent is deemed granted if a refusal to consent in a record is  
23 not received by the association within sixty days after the  
24 association delivers notice of the proposed amendment to the holder  
25 at an address for notice provided by the holder or mails the notice  
26 to the holder by certified mail, return receipt requested, at that  
27 address. If the holder has not provided an address for notice to the  
28 association, the association must provide notice to the address in  
29 the security interest of record.

30 (10) Upon thirty-day advance notice to unit owners, the declarant  
31 may, without a vote of the unit owners or approval by the board,  
32 unilaterally adopt, execute, and record a corrective amendment or  
33 supplement to the governing documents to correct a mathematical  
34 mistake, an inconsistency, or a scrivener's error, or clarify an  
35 ambiguity in the governing documents with respect to an objectively  
36 verifiable fact including, without limitation, recalculating the  
37 undivided interest in the common elements, the liability for common  
38 expenses, or the number of votes in the unit owners' association  
39 appertaining to a unit, within five years after the recordation or  
40 adoption of the governing document containing or creating the



1 mistake, inconsistency, error, or ambiguity. Any such amendment or  
2 supplement may not materially reduce what the obligations of the  
3 declarant would have been if the mistake, inconsistency, error, or  
4 ambiguity had not occurred.

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

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

11 (b) To remove language and otherwise amend as necessary to effect  
12 the removal of language purporting to forbid or restrict the  
13 conveyance, encumbrance, occupancy, or lease to: Individuals of a  
14 specified race, creed, color, sex, or national origin; individuals  
15 with sensory, mental, or physical disabilities; and families with  
16 children or any other legally protected classification;

17 (c) To remove language and otherwise amend as necessary to effect  
18 the removal of language that purports to impose limitations on the  
19 power of the association beyond the limit authorized in section  
20 302(1)(u) of this act to deal with the declarant that are more  
21 restrictive than the limitations imposed on the power of the  
22 association to deal with other persons; and

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

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

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

38 (i) The approval of the percentage specified in the declaration  
39 is obtained;

1 (ii)(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) A unit owner does not vote against the proposed amendment;  
5 and

6 (C) Notice of the proposed amendment, including notice that the  
7 failure of a unit owner to object may result in the adoption of the  
8 amendment, is delivered to the unit owners holding the votes in the  
9 association that have not voted or agreed to the proposed amendment  
10 and no written objection to the proposed amendment is received by the  
11 association within sixty days after the association delivers notice;  
12 or

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

16 (B) At least one unit owner objects to the proposed amendment;  
17 and

18 (C) Pursuant to an action brought by the association in the  
19 county in which the common interest community is situated against all  
20 objecting unit owners, the court finds, under the totality of  
21 circumstances including, but not limited to, the subject matter of  
22 the amendment, the purpose of the amendment, the percentage voting to  
23 approve the amendment, and the percentage objecting to the amendment,  
24 that the amendment is reasonable.

25 (b) If the declaration requires the affirmative vote or approval  
26 of any particular unit owner or class of unit owners as a condition  
27 of its effectiveness, the amendment is not valid without that vote or  
28 approval.

29 NEW SECTION. **Sec. 219.** TERMINATION OF COMMON INTEREST  
30 COMMUNITY. (1) Except for a taking of all the units by condemnation,  
31 foreclosure against an entire cooperative or a security interest that  
32 has priority over the declaration, or in the circumstances described  
33 in section 226 of this act, a common interest community may be  
34 terminated only by agreement of unit owners of units to which at  
35 least eighty percent of the votes in the association are allocated,  
36 or any larger percentage the declaration specifies, and with any  
37 other approvals required by the declaration. The declaration may  
38 specify a smaller percentage only if all of the units are restricted  
39 exclusively to nonresidential uses.

1 (2) An agreement to terminate must be evidenced by the execution  
2 of a termination agreement, or ratifications of the agreement, in the  
3 same manner as a deed, by the requisite number of unit owners. The  
4 termination agreement must specify a date after which the agreement  
5 is void unless it is recorded before that date. A termination  
6 agreement and all ratifications of the agreement must be recorded in  
7 every county in which a portion of the common interest community is  
8 situated and is effective only upon recordation. An agreement to  
9 terminate may only be amended by complying with the requirements of  
10 this subsection and subsection (1) of this section.

11 (3)(a) In the case of a condominium, plat community, or  
12 miscellaneous community containing only units having horizontal  
13 boundaries between units, a termination agreement may provide that  
14 all of the common elements and units of the common interest community  
15 must be sold following termination. If, pursuant to the agreement,  
16 any real estate in the common interest community is to be sold  
17 following termination, the termination agreement must set forth the  
18 minimum purchase price, manner of payment, and outside closing date,  
19 and may include any other terms of the sale.

20 (b) In the case of a condominium, plat community, or  
21 miscellaneous community containing no units having horizontal  
22 boundaries between units, a termination agreement may provide for  
23 sale of the common elements that are not necessary for the  
24 habitability of a unit, but it may not require that any unit be sold  
25 following termination, unless the declaration as originally recorded  
26 provided otherwise or all the unit owners consent to the sale. If,  
27 pursuant to the agreement, any real estate in the common interest  
28 community is to be sold following termination, the termination  
29 agreement must set forth the minimum purchase price, manner of  
30 payment, and outside closing date, and may include any other terms of  
31 sale.

32 (c) In the case of a condominium, plat community, or  
33 miscellaneous community containing some units having horizontal  
34 boundaries between units and some units without horizontal boundaries  
35 between units, a termination agreement may provide for sale of the  
36 common elements that are not necessary for the habitability of a  
37 unit, but it may not require that any unit be sold following  
38 termination, unless the declaration as originally recorded provided  
39 otherwise or all the unit owners of units in the building to be sold  
40 consent to the sale. If, pursuant to the agreement, any real estate

1 in the common interest community is to be sold following termination,  
2 the termination agreement must set forth the minimum purchase price,  
3 manner of payment, and outside closing date, and may include any  
4 other terms of sale.

5 (4)(a) The association, on behalf of the unit owners, may  
6 contract for the sale of real estate in a common interest community,  
7 but the contract is not binding on the unit owners until approved  
8 pursuant to subsections (1) and (2) of this section. If any real  
9 estate is to be sold following termination, title to that real  
10 estate, upon termination, vests in the association as trustee for the  
11 holders of all interests in the units. Thereafter, the association  
12 has all powers necessary and appropriate to effect the sale. Until  
13 the sale has been concluded and the proceeds of the sale distributed,  
14 the association continues in existence with all powers it had before  
15 termination.

16 (b) Proceeds of the sale must be distributed to unit owners and  
17 lienholders as their interests may appear, in accordance with  
18 subsections (6) and (8) of this section. Unless otherwise specified  
19 in the termination agreement, as long as the association holds title  
20 to the real estate, each unit owner and the unit owner's successors  
21 in interest have an exclusive right to occupancy of the portion of  
22 the real estate that formerly constituted the unit. During the period  
23 of that occupancy, each unit owner and the unit owner's successors in  
24 interest remain liable for all assessments and other obligations  
25 imposed on unit owners under this chapter or the declaration.

26 (5) In a condominium, plat community, or miscellaneous community,  
27 if any portion of the real estate constituting the common interest  
28 community is not to be sold following termination, title to those  
29 portions of the real estate constituting the common elements and, in  
30 a common interest community containing units having horizontal  
31 boundaries between units described in the declaration, title to all  
32 the real estate containing such boundaries in the common interest  
33 community vests in the unit owners upon termination as tenants in  
34 common in proportion to their respective interests as provided in  
35 subsection (8) of this section, and liens on the units shift  
36 accordingly. While the tenancy in common exists, each unit owner and  
37 the unit owner's successors in interest have an exclusive right to  
38 occupancy of the portion of the real estate that formerly constituted  
39 the unit.

1 (6)(a) Following termination of the common interest community,  
2 the proceeds of a sale of real estate, together with the assets of  
3 the association, are held by the association as trustee for unit  
4 owners and holders of liens on the units as their interests may  
5 appear.

6 (b) Following termination of a condominium, plat community, or  
7 miscellaneous community, creditors of the association holding liens  
8 on the units that were recorded or perfected under RCW 4.64.020  
9 before termination may enforce those liens in the same manner as any  
10 lienholder.

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

14 (7) In a cooperative, the declaration may provide that all  
15 creditors of the association have priority over any interests of unit  
16 owners and creditors of unit owners. In that event, following  
17 termination, creditors of the association holding liens on the  
18 cooperative that were recorded or perfected under RCW 4.64.020 before  
19 termination may enforce their liens in the same manner as any  
20 lienholder, and any other creditor of the association is to be  
21 treated as if the creditor had perfected a lien against the  
22 cooperative immediately before termination. Unless the declaration  
23 provides that all creditors of the association have that priority:

24 (a) The lien of each creditor of the association that was  
25 perfected against the association before termination becomes, upon  
26 termination, a lien against each unit owner's interest in the unit as  
27 of the date the lien was perfected;

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

31 (c) The amount of the lien of an association's creditor described  
32 in (a) and (b) of this subsection against each of the unit owners'  
33 interest must be proportionate to the ratio that each unit's common  
34 expense liability bears to the common expense liability of all of the  
35 units;

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

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

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

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

9 (a) Except as otherwise provided in (b) of this subsection, the  
10 respective interests of unit owners are the fair market values of  
11 their units, allocated interests, and any limited common elements  
12 immediately before the termination, as determined by one or more  
13 independent appraisers selected by the association. The decision of  
14 the independent appraisers must be distributed to the unit owners and  
15 becomes final unless disapproved within thirty days after  
16 distribution by unit owners of units to which twenty-five percent of  
17 the votes in the association are allocated. The proportion of any  
18 unit owner's interest to that of all unit owners is determined by  
19 dividing the fair market value of that unit owner's unit and its  
20 allocated interests by the total fair market values of all the units  
21 and their allocated interests.

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

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

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

30 (iii) In a plat community or miscellaneous community, their  
31 respective common expense liabilities immediately before the  
32 termination.

33 (9) In a condominium, plat community, or miscellaneous community,  
34 except as otherwise provided in subsection (10) of this section,  
35 foreclosure or enforcement of a lien or encumbrance against the  
36 entire common interest community does not terminate the common  
37 interest community, and foreclosure or enforcement of a lien or  
38 encumbrance against a portion of the common interest community, other  
39 than withdrawable real estate, does not withdraw that portion from  
40 the common interest community. Foreclosure or enforcement of a lien

1 or encumbrance against withdrawable real estate, or against common  
2 elements that have been subjected to a security interest by the  
3 association under section 314 of this act, does not withdraw that  
4 real estate from the common interest community, but the person taking  
5 title to the real estate may require from the association, upon  
6 request, an amendment excluding the real estate from the common  
7 interest community.

8 (10) In a condominium, plat community, or miscellaneous  
9 community, if a lien or encumbrance against a portion of the real  
10 estate comprising the common interest community has priority over the  
11 declaration and the lien or encumbrance has not been partially  
12 released, the parties foreclosing the lien or encumbrance, upon  
13 foreclosure, may record an instrument excluding the real estate  
14 subject to that lien or encumbrance from the common interest  
15 community.

16 (11) The right of partition under chapter 7.52 RCW is suspended  
17 if an agreement to sell property is provided for in the termination  
18 agreement pursuant to subsection (3)(a), (b), or (c) of this section.  
19 The suspension of the right to partition continues unless a binding  
20 obligation to sell does not exist three months after the recording of  
21 the termination agreement, the binding sale agreement is terminated,  
22 or one year after the termination agreement is recorded, whichever  
23 occurs first.

24 NEW SECTION. **Sec. 220.** RIGHTS OF SECURED LENDERS. (1) The  
25 declaration may require that all or a specified number or percentage  
26 of the lenders who hold security interests encumbering the units or  
27 who have extended credit to the association approve specified actions  
28 of the unit owners or the association as a condition to the  
29 effectiveness of those actions, but no requirement for approval may  
30 operate to:

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

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

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

38 (2) With respect to any action requiring the consent of a  
39 specified number or percentage of mortgagees, the consent of only

1 eligible mortgagees holding a first lien security interest need be  
2 obtained and the percentage must be based upon the votes attributable  
3 to units with respect to which eligible mortgagees have an interest.

4 (3) A lender who has extended credit to an association secured by  
5 an assignment of income or an encumbrance on the common elements may  
6 enforce its security agreement in accordance with its terms, subject  
7 to the requirements of this chapter and other law. A requirement that  
8 the association must deposit its periodic common charges before  
9 default with the lender to which the association's income has been  
10 assigned, or increase its common charges at the lender's direction by  
11 amounts reasonably necessary to amortize the loan in accordance with  
12 its terms, does not violate the prohibitions on lender approval  
13 contained in subsection (1) of this section.

14 NEW SECTION. **Sec. 221.** MASTER ASSOCIATIONS. (1) If the  
15 declaration provides that any of the powers described in section 302  
16 of this act are to be exercised by or may be delegated to a for-  
17 profit or nonprofit corporation or limited liability company that  
18 exercises those or other powers on behalf of one or more common  
19 interest communities or for the benefit of the unit owners of one or  
20 more common interest communities, all provisions of this chapter  
21 applicable to unit owners associations apply to any such corporation  
22 or limited liability company, except as modified by this section.

23 (2) Unless it is acting in the capacity of an association  
24 described in section 301 of this act, a master association may  
25 exercise the powers set forth in section 302(1)(b) of this act only  
26 to the extent expressly permitted in the declarations of common  
27 interest communities that are part of the master association or  
28 expressly described in the delegations of power from those common  
29 interest communities to the master association.

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

34 (4) The rights and responsibilities of unit owners with respect  
35 to the unit owners' association set forth in sections 303, 310, 311,  
36 312, 314, and 322 of this act apply in the conduct of the affairs of  
37 a master association only to persons who elect the board of a master  
38 association, whether or not those persons are otherwise unit owners  
39 within the meaning of this chapter.



1 (5) If a master association is also an association described in  
2 section 301 of this act, the organizational documents of the master  
3 association and the declaration of each common interest community,  
4 the powers of which are assigned by the declaration or delegated to  
5 the master association, may provide that the board of the master  
6 association must be elected after the period of declarant control in  
7 any of the following ways:

8 (a) All unit owners of all common interest communities subject to  
9 the master association may elect all members of the master  
10 association's board;

11 (b) All board members of all common interest communities subject  
12 to the master association may elect all members of the master  
13 association's board;

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

17 (d) All board members of each common interest community subject  
18 to the master association may elect specified members of the master  
19 association's board.

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

21 (1)(a) If the declaration provides that any of the powers described  
22 in section 302 of this act are to be exercised by or may be delegated  
23 to a for-profit corporation or limited liability company that  
24 exercises those or other powers on behalf of unit owners owning less  
25 than all of the units in a common interest community, and if those  
26 unit owners share the exclusive use of one or more limited common  
27 elements within the common interest community or share some property  
28 or other interest in the common interest community in common that is  
29 not shared by the remainder of the unit owners in the common interest  
30 community, all provisions of this chapter applicable to unit owners  
31 associations apply to any such corporation or limited liability  
32 company, except as modified under this section.

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

36 (2) A subassociation may exercise the powers set forth in section  
37 302 of this act only to the extent expressly permitted by the  
38 declaration of the common interest community of which the units in  
39 the subassociation are a part of or expressly described in the

1 delegations of power from that common interest community to the  
2 subassociation.

3 (3) If the declaration of any common interest community contains  
4 a delegation of certain powers to a subassociation, or provides that  
5 the board of the common interest community may make such a  
6 delegation, the board members are not liable for the acts or  
7 omissions of the subassociation with respect to those powers so  
8 exercised by the subassociation following delegation.

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

12 (5) Notwithstanding section 304(4) of this act, the board of the  
13 subassociation must be elected after any period of declarant control  
14 by the unit owners of all of the units in the common interest  
15 community subject to the subassociation.

16 (6) The declaration of the common interest community creating the  
17 subassociation may provide that the authority of the board of the  
18 subassociation is exclusive with regard to the powers and  
19 responsibilities delegated to it. In the alternative, the declaration  
20 may provide as to some or all such powers that the authority of the  
21 board of a subassociation is concurrent with and subject to the  
22 authority of the board of the unit owners association, in which case  
23 the declaration must also contain standards and procedures for the  
24 review of the decisions of the board of the subassociation and  
25 procedures for resolving any dispute between the board of the unit  
26 owners association and the board of the subassociation.

27 NEW SECTION. **Sec. 223.** MERGER OR CONSOLIDATION OF COMMON  
28 INTEREST COMMUNITIES. (1) Any two or more common interest communities  
29 of the same form of ownership, by agreement of the unit owners as  
30 provided in subsection (2) of this section, may be merged or  
31 consolidated into a single common interest community. In the event of  
32 a merger or consolidation, unless the agreement otherwise provides,  
33 the resultant common interest community is the legal successor, for  
34 all purposes, of all of the preexisting common interest communities,  
35 and the operations and activities of all associations of the  
36 preexisting common interest communities are merged or consolidated  
37 into a single association that holds all powers, rights, obligations,  
38 assets, and liabilities of all preexisting associations.

1 (2) An agreement of two or more common interest communities to  
2 merge or consolidate pursuant to subsection (1) of this section must  
3 be evidenced by an agreement prepared, executed, recorded, and  
4 certified by the president of the association of each of the  
5 preexisting common interest communities following approval by unit  
6 owners of units to which are allocated the percentage of votes in  
7 each common interest community required to terminate that common  
8 interest community. The agreement must be recorded in every county in  
9 which a portion of the common interest community is located and is  
10 not effective until recorded.

11 (3) Every merger or consolidation agreement, and every amendment  
12 providing for a merger or consolidation made by a declarant when  
13 exercising a special declarant right, must identify the declaration  
14 that will apply to the resultant common interest community and  
15 provide for the reallocation of allocated interests among the units  
16 of the resultant common interest community either (a) by stating the  
17 reallocations or the formulas upon which they are based or (b) by  
18 stating the percentage of overall allocated interests of the  
19 resultant common interest community that are allocated to all of the  
20 units comprising each of the preexisting common interest communities,  
21 and providing that the portion of the percentages allocated to each  
22 unit formerly comprising a part of the preexisting common interest  
23 community is equal to the percentages of allocated interests  
24 allocated to that unit by the declaration of the preexisting common  
25 interest community.

26 NEW SECTION. **Sec. 224.** ADDITION OF UNSPECIFIED REAL ESTATE. In  
27 a plat community or miscellaneous community, if the right is  
28 originally reserved in the declaration, the declarant, in addition to  
29 any other development right, may amend the declaration at any time  
30 during as many years as are specified in the declaration for adding  
31 additional real estate to the plat community or miscellaneous  
32 community without describing the location of that real estate in the  
33 original declaration. The amount of real estate added to the plat  
34 community or miscellaneous community pursuant to this section may not  
35 exceed ten percent of the real estate described in section 206(1)(b)  
36 of this act together with any real estate that is described in the  
37 declaration for addition to the plat community or miscellaneous  
38 community, and the declarant may not increase the number of units in  
39 the plat community or miscellaneous community beyond the number

1 stated in the original declaration pursuant to section 206(1)(c) of  
2 this act.

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

10 (2) If the requirements of subsection (1) of this section are  
11 satisfied, the declaration for the large scale community need not  
12 state a maximum number of units and need not contain any of the  
13 information required under section 206(1) (c) through (n) of this act  
14 until the declaration is amended under subsection (3) of this  
15 section.

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

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

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

23 (4) The only real estate in a large scale community subject to  
24 this chapter are units that have been made subject to the declaration  
25 or that are being offered for sale and any other real estate  
26 described pursuant to subsection (3) of this section. Other real  
27 estate that is or may become part of the large scale community is  
28 only subject to other law and to any other restrictions and  
29 limitations that appear of record.

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

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

1 (7) The period of declarant control of the association for a  
2 large scale community terminates in accordance with any conditions  
3 specified in the declaration or otherwise at the time the declarant,  
4 in a recorded instrument and after giving notice in a record to the  
5 board of the association, voluntarily surrenders all rights to  
6 control the activities of the association.

7 NEW SECTION. **Sec. 226.** JUDICIAL TERMINATION. (1) If  
8 substantially all the units in a common interest community have been  
9 destroyed or abandoned or are uninhabitable and the available methods  
10 for giving notice under section 324 of this act of a meeting of unit  
11 owners to consider termination under section 219 of this act will not  
12 likely result in receipt of the notice, the board or any other  
13 interested person may commence an action seeking to terminate the  
14 common interest community in the superior court for any county in  
15 which a portion of the common interest community is located. If any  
16 portion of the common interest community is located in a county other  
17 than the county in which the action is commenced, the person  
18 commencing the action must record a copy of the judgment in the other  
19 county.

20 (2) During the pendency of the action, the court may issue  
21 whatever orders it considers appropriate, including appointment of a  
22 receiver. After a hearing, the court may terminate the common  
23 interest community or reduce its size and may issue any other order  
24 the court considers to be in the best interest of the unit owners and  
25 persons holding an interest in the common interest community.

### 26 **III. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**

27 NEW SECTION. **Sec. 301.** ORGANIZATION OF UNIT OWNERS ASSOCIATION.  
28 (1) A unit owners association must be organized no later than the  
29 date the first unit in the common interest community is conveyed to a  
30 purchaser.

31 (2) The membership of the association at all times consists  
32 exclusively of all unit owners or, following termination of the  
33 common interest community, of all former unit owners entitled to  
34 distributions of proceeds under section 219 of this act or their  
35 heirs, successors, or assigns.

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

1 (4) In case of any conflict between Title 23B RCW or chapter  
2 23.86, 24.03, 24.06, or 25.15 RCW and this chapter, this chapter  
3 controls.

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

- 6 (a) Adopt organizational documents;
- 7 (b) Adopt budgets as provided in section 326 of this act;
- 8 (c) Impose assessments for common expenses and specially  
9 allocated expenses on the unit owners as provided in sections 117(1)  
10 and 326 of this act;
- 11 (d) Prepare financial statements as provided in section 327 of  
12 this act; and
- 13 (e) Deposit and maintain the funds of the association in accounts  
14 as provided in section 327 of this act.

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

- 18 (a) Amend organizational documents and adopt and amend rules;
- 19 (b) Amend budgets under section 326 of this act;
- 20 (c) Hire and discharge managing agents and other employees,  
21 agents, and independent contractors;
- 22 (d) Institute, defend, or intervene in litigation or in  
23 arbitration, mediation, or administrative proceedings or any other  
24 legal proceeding in its own name on behalf of itself or two or more  
25 unit owners on matters affecting the common interest community;
- 26 (e) Make contracts and incur liabilities subject to subsection  
27 (4) of this section;
- 28 (f) Regulate the use, maintenance, repair, replacement, and  
29 modification of common elements;
- 30 (g) Cause additional improvements to be made as a part of the  
31 common elements;
- 32 (h) Acquire, hold, encumber, and convey in its own name any  
33 right, title, or interest to real estate or personal property, but:
- 34 (i) Common elements in a condominium, plat community, or  
35 miscellaneous community may be conveyed or subjected to a security  
36 interest pursuant to section 314 of this act only; and
- 37 (ii) Part of a cooperative may be conveyed, or all or part of a  
38 cooperative may be subjected to a security interest pursuant to  
39 section 314 of this act only;

- 1 (i) Grant easements, leases, licenses, and concessions through or  
2 over the common elements and petition for or consent to the vacation  
3 of streets and alleys;
- 4 (j) Impose and collect any reasonable payments, fees, or charges  
5 for:
- 6 (i) The use, rental, or operation of the common elements, other  
7 than limited common elements described in section 203 (1)(b) and (3)  
8 of this act;
- 9 (ii) Services provided to unit owners; and
- 10 (iii) Moving in, moving out, or transferring title to units to  
11 the extent provided for in the declaration;
- 12 (k) Collect assessments and impose and collect reasonable charges  
13 for late payment of assessments;
- 14 (l) Enforce the governing documents and, after notice and  
15 opportunity to be heard, impose and collect reasonable fines for  
16 violations of the governing documents in accordance with a previously  
17 established schedule of fines adopted by the board of directors and  
18 furnished to the owners;
- 19 (m) Impose and collect reasonable charges for the preparation and  
20 recordation of amendments to the declaration, resale certificates  
21 required under section 409 of this act, lender questionnaires, or  
22 statements of unpaid assessments;
- 23 (n) Provide for the indemnification of its officers and board  
24 members, to the extent provided in RCW 23B.17.030;
- 25 (o) Maintain directors' and officers' liability insurance;
- 26 (p) Subject to subsection (4) of this section, assign its right  
27 to future income, including the right to receive assessments;
- 28 (q) Join in a petition for the establishment of a parking and  
29 business improvement area, participate in the ratepayers' board or  
30 other advisory body set up by the legislative authority for operation  
31 of a parking and business improvement area, and pay special  
32 assessments levied by the legislative authority on a parking and  
33 business improvement area encompassing the condominium property for  
34 activities and projects that benefit the condominium directly or  
35 indirectly;
- 36 (r) Establish and administer a reserve account as described in  
37 section 328 of this act;
- 38 (s) Prepare a reserve study as described in section 330 of this  
39 act;

1 (t) Exercise any other powers conferred by the declaration or  
2 organizational documents;

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

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

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

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

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

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

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

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

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

25 (b) Institute litigation or an arbitration, mediation, or  
26 administrative proceeding against any person, subject to the  
27 following:

28 (i) The association must comply with chapter 64.50 RCW, if  
29 applicable, before instituting any proceeding described in chapter  
30 64.50 RCW in connection with construction defects; and

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

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

39 (a) The board must provide notice of the intent to borrow to all  
40 unit owners. The notice must include the purpose and maximum amount



1 of the loan, the estimated amount and term of any assessments  
2 required to repay the loan, a reasonably detailed projection of how  
3 the money will be expended, and the interest rate and term of the  
4 loan.

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

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

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

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

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

22 (c) Enforce any other rights against the tenant for the violation  
23 that the unit owner as the landlord could lawfully have exercised  
24 under the lease or that the association could lawfully have exercised  
25 directly against the unit owner, or both; but the association does  
26 not have the right to terminate a lease or evict a tenant unless  
27 permitted by the declaration. The rights referred to in this  
28 subsection (5)(c) may be exercised only if the tenant or unit owner  
29 fails to cure the violation within ten days after the association  
30 notifies the tenant and unit owner of that violation.

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

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

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

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

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

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

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

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

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

12 (9) The board's decision under subsections (7) and (8) of this  
13 section to not pursue enforcement under one set of circumstances does  
14 not prevent the board from taking enforcement action under another  
15 set of circumstances, but the board may not be arbitrary or  
16 capricious in taking enforcement action.

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

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

21 (b) In the performance of their duties, officers and board  
22 members must exercise the degree of care and loyalty to the  
23 association required of an officer or director of a corporation  
24 organized, and are subject to the conflict of interest rules  
25 governing directors and officers, under chapter 24.06 RCW. The  
26 standards of care and loyalty described in this section apply  
27 regardless of the form in which the association is organized.

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

34 (b) Unless the declaration or organizational documents provide  
35 for the election of officers by the unit owners, the board must elect  
36 the officers.

37 (c) Unless provided otherwise in the declaration or  
38 organizational documents, board members and officers must take office  
39 upon adjournment of the meeting at which they were elected or

1 appointed or, if not elected or appointed at a meeting, at the time  
2 of such election or appointment, and must serve until their successor  
3 takes office.

4 (d) In determining the qualifications of any officer or board  
5 member of the association, "unit owner" includes, unless the  
6 declaration or organizational documents provide otherwise, any board  
7 member, officer, member, partner, or trustee of any person, who is,  
8 either alone or in conjunction with another person or persons, a unit  
9 owner.

10 (e) Any officer or board member of the association who would not  
11 be eligible to serve as such if he or she were not a board member,  
12 officer, partner in, or trustee of such a person is disqualified from  
13 continuing in office if he or she ceases to have any such affiliation  
14 with that person or that person would have been disqualified from  
15 continuing in such office as a natural person.

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

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

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

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

24 (c) Terminate the common interest community;

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

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

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

33 (6) Except for committees appointed by the declarant pursuant to  
34 special declarant rights, all committees of the association must be  
35 appointed by the board. Committees authorized to exercise any power  
36 reserved to the board must include at least two board members who  
37 have exclusive voting power for that committee. Committees that are  
38 not so composed may not exercise the authority of the board and are  
39 advisory only.

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

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

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

7            (ii) Veto or approve a proposed action of the board or  
8 association.

9            (b) A declarant may voluntarily surrender the right to appoint  
10 and remove officers and board members before the period ends. In that  
11 event, the declarant may require that during the remainder of the  
12 period, specified actions of the association or board, as described  
13 in a recorded amendment to the declaration executed by the declarant,  
14 be approved by the declarant before they become effective. A  
15 declarant's failure to veto or approve such proposed action in  
16 writing within thirty days after receipt of written notice of the  
17 proposed action is deemed approval by the declarant.

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

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

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

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

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

31            (3) Not later than sixty days after conveyance of twenty-five  
32 percent of the units that may be created to unit owners other than a  
33 declarant, at least one member and not less than twenty-five percent  
34 of the members of the board must be elected by unit owners other than  
35 the declarant. Not later than sixty days after conveyance of fifty  
36 percent of the units that may be created to unit owners other than a  
37 declarant, not less than thirty-three and one-third percent of the  
38 members of the board must be elected by unit owners other than the  
39 declarant. Until such members are elected and take office, the  
40 existing board may continue to act on behalf of the association.

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

9 NEW SECTION. **Sec. 305.** TRANSFER OF ASSOCIATION PROPERTY. (1) No  
10 later than thirty days following the date of the transition meeting  
11 held pursuant to section 304(4) of this act, the declarant must  
12 deliver or cause to be delivered to the board elected at the  
13 transition meeting all property of the unit owners and association as  
14 required by the declaration or this chapter including, but not  
15 limited to:

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

18 (b) The organizational documents of the association;

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

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

22 (e) Resignations of officers and members of the board who are  
23 required to resign because the declarant is required to relinquish  
24 control of the association;

25 (f) The financial records, including canceled checks, bank  
26 statements, and financial statements of the association, and source  
27 documents from the time of formation of the association through the  
28 date of transfer of control to the unit owners;

29 (g) Association funds or the control of the funds of the  
30 association;

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

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

35 (j) Except for alterations to a unit done by a unit owner other  
36 than the declarant, a copy of the most recent plans and  
37 specifications used in the construction or remodeling of the common  
38 interest community, except for buildings containing fewer than three  
39 units;

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

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

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

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

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

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

20 (q) Originals or photocopies of any employment contracts or  
21 service contracts in which the association is one of the contracting  
22 parties or service contracts in which the association or the unit  
23 owners have an obligation or a responsibility, directly or  
24 indirectly, to pay some or all of the fee or charge of the person  
25 performing the service;

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

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

30 (2) Within sixty days of the transition meeting, the board must  
31 retain the services of a certified public accountant to audit the  
32 records of the association as the date of the transition meeting in  
33 accordance with generally accepted auditing standards unless the unit  
34 owners, other than the declarant, to which a majority of the votes  
35 are allocated elect to waive the audit. The cost of the audit must be  
36 a common expense unless otherwise provided in the declaration. The  
37 accountant performing the audit must examine supporting documents and  
38 records, including the cash disbursements and related paid invoices,  
39 to determine if expenditures were for association purposes and the

1 billings, cash receipts, and related records to determine if the  
2 declarant was charged for and paid the proper amount of assessments.

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

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

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

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

12 (1) Except as provided in subsection (3) of this section, a special  
13 declarant right created or reserved under this chapter may be  
14 transferred only by an instrument effecting the transfer and executed  
15 by the transferor, to be recorded in every county in which any  
16 portion of the common interest community is located. The transferee  
17 must provide the association with a copy of the recorded instrument,  
18 but the failure to furnish the copy does not invalidate the transfer.

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

21 (a) A transferor is not relieved of any obligation or liability  
22 arising before the transfer and remains liable for such warranty  
23 obligations arising before the transfer imposed upon the transferor  
24 under this chapter. Lack of privity does not deprive any unit owner  
25 of standing to maintain an action to enforce any obligation of the  
26 transferor.

27 (b) If a successor to any special declarant right is an affiliate  
28 of a declarant the transferor is jointly and severally liable with  
29 the successor for any obligations or liabilities of the successor  
30 relating to the common interest community.

31 (c) If a transferor retains any special declarant rights, but  
32 transfers other special declarant rights to a successor who is not an  
33 affiliate of the declarant, the transferor is liable for any  
34 obligations or liabilities imposed on a declarant under this chapter  
35 or by the declaration relating to the retained special declarant  
36 rights, whether arising before or after the transfer.

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

1 (3) Upon foreclosure of a security interest, sale by a trustee  
2 under an agreement creating a security interest, tax sale, judicial  
3 sale, or sale under bankruptcy code or receivership proceedings of  
4 any unit owned by a declarant or real property in a common interest  
5 community that is subject to any special declarant rights, a person  
6 acquiring title to the real property being foreclosed or sold  
7 succeeds to all of the special declarant rights related to that real  
8 property held by that declarant and to any rights reserved in the  
9 declaration pursuant to section 216 of this act and held by that  
10 declarant to maintain models, sales offices, and signs except to the  
11 extent the judgment or instrument effecting the transfer states  
12 otherwise.

13 (4) Upon foreclosure of a security interest, sale by a trustee  
14 under an agreement creating a security interest, tax sale, judicial  
15 sale, or sale under bankruptcy code or receivership proceedings of  
16 all interests in a common interest community owned by a declarant,  
17 any special declarant rights that are not transferred as stated in  
18 subsection (3) of this section terminate.

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

21 (a) A successor to any special declarant right who is an  
22 affiliate of a declarant is subject to all obligations and  
23 liabilities imposed on the transferor under this chapter or by the  
24 declaration.

25 (b) A successor to any special declarant right, other than a  
26 successor who is an affiliate of a declarant, is subject to the  
27 obligations and liabilities imposed under this chapter or the  
28 declaration:

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

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

32 (A) Misrepresentations by any previous declarant;

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

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

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



1 (c) A successor to only a right reserved in the declaration to  
2 maintain models, sales offices, and signs may not exercise any other  
3 special declarant right, and is not subject to any liability or  
4 obligation as a declarant, except the obligation to provide a public  
5 offering statement and any liability arising as a result of such  
6 reserved rights.

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

11 NEW SECTION. **Sec. 307.** TERMINATION OF CONTRACTS AND LEASES. (1)  
12 Within two years after the transition meeting, the association may  
13 terminate without penalty, upon not less than ninety days' notice to  
14 the other party, any of the following if it was entered into before  
15 the board was elected:

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

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

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

25 (3) This section does not apply to:

26 (a) Any lease the termination of which would terminate the common  
27 interest community or reduce its size, unless the real estate subject  
28 to that lease was included in the common interest community for the  
29 purpose of avoiding the right of the association to terminate a lease  
30 under this section; or

31 (b) A proprietary lease.

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

35 (a) Provide the number of board members and the titles of the  
36 officers of the association;

37 (b) Provide for election by the board or, if the declaration  
38 requires, by the unit owners of a president, treasurer, secretary,

1 and any other officers of the association the organizational  
2 documents specify;

3 (c) Specify the qualifications, powers and duties, terms of  
4 office, and manner of electing and removing board members and  
5 officers and filling vacancies in accordance with section 303 of this  
6 act;

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

9 (e) Specify a method for the unit owners to amend the  
10 organizational documents;

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

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

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

19 (2) Subject to the declaration and this chapter, the  
20 organizational documents may provide for any other necessary or  
21 appropriate matters.

22 NEW SECTION. **Sec. 309.** UPKEEP OF COMMON INTEREST COMMUNITY. (1)  
23 Except to the extent provided by the declaration, subsections (2) and  
24 (4) of this section, or section 315(8) of this act, the association  
25 must maintain, repair, and replace the common elements, including  
26 limited common elements, and each unit owner must maintain, repair,  
27 and replace that owner's unit.

28 (2) The board may by rule designate physical components of the  
29 property for which a unit owner is otherwise responsible that present  
30 a heightened risk of damage or harm to persons or property if the  
31 physical components fail. The association may require that specific  
32 measures be taken by the unit owner or the association to diminish  
33 that risk of harm. If a unit owner fails to accomplish any necessary  
34 maintenance, repair, or replacement to those components, or fails to  
35 take any other measures required of the unit owner under this  
36 subsection, the association may, after notice to a unit owner and an  
37 opportunity to be heard, enter the unit in the manner pursuant to  
38 subsection (3) of this section to perform such maintenance, repair,  
39 replacement, or measure at the expense of that unit owner.

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

10 (4) In addition to the liability that a declarant as a unit owner  
11 has under this chapter, the declarant alone is liable for all  
12 expenses in connection with real estate subject to development rights  
13 and no other unit owner and no other portion of the common interest  
14 community is subject to a claim for payment of those expenses.  
15 However, the declaration may provide that the expenses associated  
16 with the operation, maintenance, repair, and replacement of a common  
17 element that the owners have a right to use must be paid by the  
18 association as a common expense. Unless the declaration provides  
19 otherwise, any income or proceeds from real estate subject to  
20 development rights inures to the declarant.

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

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

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

32 (b)(i) An association must hold a special meeting of unit owners  
33 to address any matter affecting the common interest community or the  
34 association if its president, a majority of the board, or unit owners  
35 having at least twenty percent, or any lower percentage specified in  
36 the organizational documents, of the votes in the association request  
37 that the secretary call the meeting.

38 (ii) If the association does not provide notice to unit owners of  
39 a special meeting within thirty days after the requisite number or

1 percentage of unit owners request the secretary to do so, the  
2 requesting members may directly provide notice to all the unit owners  
3 of the meeting. Only matters described in the meeting notice required  
4 in (c) of this subsection may be considered at a special meeting.

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

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

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

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

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

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

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

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

28 (a) Meetings must be open to the unit owners except during  
29 executive sessions, but the board may expel or prohibit attendance by  
30 any person who, after warning by the chair of the meeting, disrupts  
31 the meeting. The board and those committees may hold an executive  
32 session only during a regular or special meeting of the board or a  
33 committee. A final vote or action may not be taken during an  
34 executive session.

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

36 (i) Consult with the association's attorney concerning legal  
37 matters;

38 (ii) Discuss existing or potential litigation or mediation,  
39 arbitration, or administrative proceedings;

40 (iii) Discuss labor or personnel matters;

1 (iv) Discuss contracts, leases, and other commercial transactions  
2 to purchase or provide goods or services currently being negotiated,  
3 including the review of bids or proposals, if premature general  
4 knowledge of those matters would place the association at a  
5 disadvantage; or

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

9 (c) For purposes of this subsection, a gathering of members of  
10 the board or committees at which the board or committee members do  
11 not conduct association business is not a meeting of the board or  
12 committee. Board members and committee members may not use incidental  
13 or social gatherings to evade the open meeting requirements of this  
14 subsection.

15 (d) During the period of declarant control, the board must meet  
16 at least four times a year. At least one of those meetings must be  
17 held at the common interest community or at a place convenient to the  
18 community. After the transition meeting, all board meetings must be  
19 at the common interest community or at a place convenient to the  
20 common interest community unless the unit owners amend the bylaws to  
21 vary the location of those meetings.

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

25 (f) Unless the meeting is included in a schedule given to the  
26 unit owners or the meeting is called to deal with an emergency, the  
27 secretary or other officer specified in the organizational documents  
28 must provide notice of each board meeting to each board member and to  
29 the unit owners. The notice must be given at least fourteen days  
30 before the meeting and must state the time, date, place, and agenda  
31 of the meeting.

32 (g) If any materials are distributed to the board before the  
33 meeting, the board must make copies of those materials reasonably  
34 available to those unit owners, except that the board need not make  
35 available copies of unapproved minutes or materials that are to be  
36 considered in executive session.

37 (h) Unless the organizational documents provide otherwise, fewer  
38 than all board members may participate in a regular or special  
39 meeting by or conduct a meeting through the use of any means of  
40 communication by which all board members participating can hear each

1 other during the meeting. A board member participating in a meeting  
2 by these means is deemed to be present in person at the meeting.

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

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

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

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

16 (k) Instead of meeting, the board may act by unanimous consent as  
17 documented in a record by all its members. Actions taken by unanimous  
18 consent must be kept as a record of the association with the meeting  
19 minutes. After the transition meeting, the board may act by unanimous  
20 consent only to undertake ministerial actions, actions subject to  
21 ratification by the unit owners, or to implement actions previously  
22 taken at a meeting of the board.

23 (l) A board member who is present at a board meeting at which any  
24 action is taken is presumed to have assented to the action taken  
25 unless the board member's dissent or abstention to such action is  
26 lodged with the person acting as the secretary of the meeting before  
27 adjournment of the meeting or provided in a record to the secretary  
28 of the association immediately after adjournment of the meeting. The  
29 right to dissent or abstain does not apply to a board member who  
30 voted in favor of such action at the meeting.

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

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

39 (3) Minutes of all unit owner meetings and board meetings,  
40 excluding executive sessions, must be maintained in a record. The

1 decision on each matter voted upon at a board meeting or unit owner  
2 meeting must be recorded in the minutes.

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

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

9 (b) Have voted by absentee ballot; or

10 (c) Are present by any combination of (a) and (b) of this  
11 subsection.

12 (2) Unless the organizational documents specify a larger number,  
13 a quorum of the board is present for purposes of determining the  
14 validity of any action taken at a meeting of the board only if  
15 individuals entitled to cast a majority of the votes on that board  
16 are present at the time a vote regarding that action is taken. If a  
17 quorum is present when a vote is taken, the affirmative vote of a  
18 majority of the board members present is the act of the board unless  
19 a greater vote is required by the organizational documents.

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

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

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

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

31 (b) If only one of several unit owners of a unit is present, that  
32 unit owner is entitled to cast all the votes allocated to that unit.  
33 If more than one of the unit owners are present, the votes allocated  
34 to that unit may be cast only in accordance with the agreement of a  
35 majority in interest of the unit owners, unless the declaration  
36 expressly provides otherwise. There is a majority agreement if any  
37 one of the unit owners casts the votes allocated to the unit without

1 protest being made promptly to the person presiding over the meeting  
2 by any of the other unit owners of the unit.

3 (c) Unless a greater number or fraction of the votes in the  
4 association is required under this chapter or the declaration or  
5 organizational documents, a majority of the votes cast determines the  
6 outcome of any action of the association.

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

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

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

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

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

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

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

25 (c) A unit owner may revoke a proxy given pursuant to this  
26 section only by actual notice of revocation to the secretary or the  
27 person presiding over a meeting of the association or by delivery of  
28 a subsequent proxy. The death or disability of a unit owner does not  
29 revoke a proxy given by the unit owner unless the person presiding  
30 over the meeting has actual notice of the death or disability.

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

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

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

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

40 (b) The notice must state:



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

5 (ii) The percent of votes necessary to meet the quorum  
6 requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) If the wrong occurred during any period of declarant control  
28 and the association gives the declarant reasonable notice of and an  
29 opportunity to defend against the action, the declarant who then  
30 controlled the association is liable to the association or to any  
31 unit owner for (i) all tort losses not covered by insurance suffered  
32 by the association or that unit owner and (ii) all costs that the  
33 association would not have incurred but for a breach of contract or  
34 other wrongful act or omission by the association.

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

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

5 (b) A unit owner is not precluded from maintaining an action  
6 contemplated under this section because that person is a unit owner,  
7 board member, or officer of the association. Liens resulting from  
8 judgments against the association are governed under section 319 of  
9 this act.

10 NEW SECTION. **Sec. 314.** CONVEYANCE OR ENCUMBRANCE OF COMMON  
11 ELEMENTS. (1)(a) In a common interest community other than a  
12 cooperative, portions of the common elements may be conveyed or  
13 subjected to a security interest by the association if unit owners  
14 entitled to cast at least eighty percent of the votes in the  
15 association, including eighty percent of the votes allocated to units  
16 not owned by a declarant, or any larger percentage the declaration  
17 specifies, agree to that action; but all unit owners of units to  
18 which any limited common element is allocated must agree to convey  
19 that limited common element or subject it to a security interest. The  
20 declaration may specify a smaller percentage only if all of the units  
21 are restricted exclusively to nonresidential uses.

22 (b) Proceeds of the sale or a loan are an asset of the  
23 association, but the proceeds of the sale of limited common elements  
24 must be distributed equitably among the unit owners of units to which  
25 the limited common elements were allocated. This subsection (1) does  
26 not apply to the incorporation of common elements into units as a  
27 result of relocating unit boundaries pursuant to section 213 of this  
28 act, to subdividing or combining units pursuant to section 214 of  
29 this act, or to eminent domain proceedings pursuant to section 106 of  
30 this act.

31 (2)(a) Part of a cooperative may be conveyed and all or part of a  
32 cooperative may be subjected to a security interest by the  
33 association if unit owners entitled to cast at least eighty percent  
34 of the votes in the association, including eighty percent of the  
35 votes allocated to units not owned by a declarant, or any larger  
36 percentage the declaration specifies, agree to that action; but, if  
37 fewer than all of the units or limited common elements are to be  
38 conveyed or subjected to a security interest, all unit owners of  
39 those units, or the units to which those limited common elements are

1 allocated, must agree to convey those units or limited common  
2 elements or subject them to a security interest. The declaration may  
3 specify a smaller percentage only if all of the units are restricted  
4 exclusively to nonresidential uses.

5 (b) Proceeds of the sale or a loan are an asset of the  
6 association. Any purported conveyance or other voluntary transfer of  
7 an entire cooperative, unless made pursuant to section 219 of this  
8 act, is void. This subsection (2) does not apply to the incorporation  
9 of common elements into units as a result of relocating unit  
10 boundaries pursuant to section 213 of this act, to subdividing or  
11 combining units pursuant to section 214 of this act, or to eminent  
12 domain proceedings pursuant to section 106 of this act.

13 (3) An agreement to convey common elements in a common interest  
14 community other than a cooperative, or to subject them to a security  
15 interest, or in a cooperative, an agreement to convey any part of a  
16 cooperative or subject it to a security interest, must be evidenced  
17 by the execution of an agreement, or ratifications of an agreement,  
18 in the same manner as a deed, by the requisite number of unit owners.  
19 The agreement must specify a date after which the agreement will be  
20 void unless recorded before that date. The agreement and all  
21 ratifications of the agreement must be recorded in every county in  
22 which a portion of the common interest community is situated and is  
23 effective only upon recordation.

24 (4) The association, on behalf of the unit owners, may contract  
25 to convey or dedicate an interest in a common interest community  
26 pursuant to subsection (1) of this section, but the contract is not  
27 enforceable against the association until approved pursuant to  
28 subsection (1), (2), or (3) of this section. Thereafter, the  
29 association has all powers necessary and appropriate to effect the  
30 conveyance or encumbrance, including the power to execute deeds or  
31 other instruments.

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

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

38 (7) Unless the declaration requires a higher percentage, if the  
39 consent of eligible mortgagees holding security interests on at least  
40 eighty percent of the units subject to security interests held by

1 eligible mortgagees on the day the unit owners' agreement under  
2 subsection (3) of this section is recorded, is obtained:

3 (a) A conveyance of common elements pursuant to this section  
4 terminates both the undivided interests in those common elements  
5 allocated to the units and the security interests in those undivided  
6 interests held by all persons holding security interests in the  
7 units; and

8 (b) An encumbrance of common elements pursuant to this section  
9 has priority over all preexisting encumbrances on the undivided  
10 interests in those common elements held by all persons holding  
11 security interests in the units.

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

23 (9) In a cooperative, the association may acquire, hold,  
24 encumber, or convey a proprietary lease without complying with this  
25 section.

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

30 (a) Property insurance on the common elements and, in a plat  
31 community or miscellaneous community, also on property that must  
32 become common elements, insuring against risks of direct physical  
33 loss commonly insured against, which insurance, after application of  
34 any deductibles, must be not less than eighty percent of the actual  
35 cash value of the insured property at the time the insurance is  
36 purchased and at each renewal date, exclusive of land, excavations,  
37 foundations, and other items normally excluded from property  
38 policies;

1 (b) Commercial general liability insurance, including medical  
2 payments insurance, in an amount determined by the board, but not  
3 less than any amount specified in the declaration, covering all  
4 occurrences commonly insured against for bodily injury and property  
5 damage arising out of or in connection with the use, ownership, or  
6 maintenance of the common elements and, in cooperatives, of all  
7 units;

8 (c) Fidelity insurance; and

9 (d) Other insurance required under the declaration.

10 (2) In the case of a building that contains units divided by  
11 horizontal boundaries described in the declaration, or vertical  
12 boundaries that comprise common walls between units, the insurance  
13 maintained under subsection (1)(a) of this section, to the extent  
14 reasonably available, must include the units and, unless provided  
15 otherwise in the declaration, all improvements and betterments to the  
16 units.

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

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

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

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

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

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

36 (5) Any loss covered by the property insurance policy under  
37 subsection (1)(a) and (b) of this section must be adjusted with the  
38 association, but the insurance proceeds for that loss are payable to  
39 any insurance trustee designated for that purpose, or otherwise to  
40 the association, and not to any holder of a security interest. The

1 insurance trustee or the association must hold any insurance proceeds  
2 in trust for the association, unit owners, and lienholders as their  
3 interests may appear. Subject to subsection (8) of this section, the  
4 proceeds must be disbursed first for the repair or replacement of the  
5 damaged property, and the association, unit owners, and lienholders  
6 are not entitled to receive payment of any portion of the proceeds  
7 unless there is a surplus of proceeds after the property has been  
8 completely repaired or replaced, or the common interest community is  
9 terminated.

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

13 (7) An insurer that has issued an insurance policy under this  
14 section must issue certificates or memoranda of insurance to the  
15 association and, upon a request made in a record, to any unit owner  
16 or holder of a security interest. The insurer issuing the policy may  
17 not modify the amount or the extent of the coverage of the policy or  
18 cancel or refuse to renew the policy unless the insurer has complied  
19 with all applicable provisions of chapter 48.18 RCW pertaining to the  
20 cancellation or nonrenewal of contracts of insurance. The insurer may  
21 not modify the amount or the extent of the coverage of the policy or  
22 cancel or refuse to renew the policy without complying with this  
23 section.

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

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

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

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

33 (9) The cost of repair or replacement not paid from insurance  
34 proceeds is a common expense. If all of the damaged or destroyed  
35 portions of the common interest community are not repaired or  
36 replaced:

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

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

1 (i) The insurance proceeds attributable to units and limited  
2 common elements that are not repaired or replaced must be distributed  
3 to the unit owners of those units and the unit owners of the units to  
4 which those limited common elements were allocated, or to  
5 lienholders, as their interests may appear; and

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

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

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

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

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

21 NEW SECTION. **Sec. 316.** ACCOUNTS—RECONCILIATION. (1) The  
22 association must establish and maintain its accounts and records in a  
23 manner that will enable it to credit assessments for common expenses  
24 and specially allocated expenses, including allocations to reserves,  
25 and other income to the association, and to charge expenditures, to  
26 the account of the appropriate units in accordance with the  
27 provisions of the declaration.

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



1           NEW SECTION.   **Sec. 317.**   ASSESSMENTS AND CAPITAL CONTRIBUTIONS.

2   (1)(a) Assessments for common expenses and those specially allocated  
3 expenses that are subject to inclusion in a budget must be made at  
4 least annually based on a budget adopted at least annually by the  
5 association in the manner provided in section 326 of this act.

6       (b) Assessments for common expenses and specially allocated  
7 expenses must commence on all units that have been created upon the  
8 conveyance of the first unit in the common interest community;  
9 however, the declarant may delay commencement of assessments for some  
10 or all common expenses or specially allocated expenses, in which  
11 event the declarant must pay all of the common expenses or specially  
12 allocated expenses that have been delayed. In a common interest  
13 community in which units may be added pursuant to reserved  
14 development rights, the declarant may delay commencement of  
15 assessments for such units in the same manner.

16       (2) The declaration may provide that, upon closing of the first  
17 conveyance of each unit to a purchaser or first occupancy of a unit,  
18 whichever occurs first, the association may assess and collect a  
19 working capital contribution for such unit. The working capital  
20 contribution may be collected prior to the commencement of common  
21 assessments under subsection (1) of this section. A working capital  
22 contribution may not be used to defray expenses that are the  
23 obligation of the declarant.

24       (3) Except as provided otherwise in this section, all common  
25 expenses must be assessed against all the units in accordance with  
26 their common expense liabilities, subject to the right of the  
27 declarant to delay commencement of certain common expenses under  
28 subsections (1) and (2) of this section. Any past due assessment or  
29 installment of past due assessment bears interest at the rate  
30 established by the association pursuant to section 318 of this act.

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

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

39       (b) Expenses specified in the declaration as benefiting fewer  
40 than all of the units or their unit owners exclusively against the

1 units benefited in proportion to their common expense liability or in  
2 any other proportion that the declaration provides;

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

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

7 (5) Assessments to pay a judgment against the association may be  
8 made only against the units in the common interest community at the  
9 time the judgment was entered, in proportion to their common expense  
10 liabilities.

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

17 (7) If the declaration so provides, to the extent that any  
18 expense of the association is caused by the negligence of any unit  
19 owner or that unit owner's tenant, guest, invitee, or occupant, the  
20 association may assess that expense against the unit owner's unit  
21 after notice and an opportunity to be heard, to the extent of the  
22 association's deductible and any expenses not covered under an  
23 insurance policy issued to the association.

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

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

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

1 (2) A lien under this section has priority over all other liens  
2 and encumbrances on a unit except:

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

6 (b) Except as otherwise provided in subsection (3) of this  
7 section, a security interest on the unit recorded before the date on  
8 which the unpaid assessment became due or, in a cooperative, a  
9 security interest encumbering only the unit owner's interest and  
10 perfected before the date on which the unpaid assessment became due;  
11 and

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

14 (3)(a) A lien under this section also has priority over the  
15 security interests described in subsection (2)(b) of this section to  
16 the extent of an amount equal to the following:

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

26 (ii) The association's actual costs and reasonable attorneys'  
27 fees incurred in foreclosing its lien but incurred after the giving  
28 of the notice described in (a)(iii) of this subsection; provided,  
29 however, that the costs and reasonable attorneys' fees that will have  
30 priority under this subsection (3)(a)(ii) shall not exceed two  
31 thousand dollars or an amount equal to the amounts described in  
32 (a)(i) of this subsection, whichever is less;

33 (iii) The amounts described in (a)(ii) of this subsection shall  
34 be prior only to the security interest of the holder of a security  
35 interest on the unit recorded before the date on which the unpaid  
36 assessment became due and only if the association has given that  
37 holder not less than sixty days' prior written notice that the owner  
38 of the unit is in default in payment of an assessment. The notice  
39 shall contain:

40 (A) Name of the borrower;

1 (B) Recording date of the trust deed or mortgage;  
2 (C) Recording information;  
3 (D) Name of condominium, unit owner, and unit designation stated  
4 in the declaration or applicable supplemental declaration;  
5 (E) Amount of unpaid assessment; and  
6 (F) A statement that failure to, within sixty days of the written  
7 notice, submit the association payment of six months of assessments  
8 as described in (a)(i) of this subsection will result in the priority  
9 of the amounts described in (a)(ii) of this subsection; and  
10 (iv) Upon payment of the amounts described in (a)(i) of this  
11 subsection by the holder of a security interest, the association's  
12 lien described in this subsection (3)(a) shall thereafter be fully  
13 subordinated to the lien of such holder's security interest on the  
14 unit.  
15 (b) For the purposes of this subsection:  
16 (i) "Institution of proceedings" means either:  
17 (A) The date of recording of a notice of trustee's sale by a deed  
18 of trust beneficiary;  
19 (B) The date of commencement, pursuant to applicable court rules,  
20 of an action for judicial foreclosure either by the association or by  
21 the holder of a recorded security interest; or  
22 (C) The date of recording of a notice of intention to forfeit in  
23 a real estate contract forfeiture proceeding by the vendor under a  
24 real estate contract.  
25 (ii) "Capital improvements" does not include making, in the  
26 ordinary course of management, repairs to common elements or  
27 replacements of the common elements with substantially similar items,  
28 subject to: (A) Availability of materials and products, (B)  
29 prevailing law, or (C) sound engineering and construction standards  
30 then prevailing.  
31 (c) The adoption of a periodic budget that purports to allocate  
32 to a unit any fines, late charges, interest, attorneys' fees and  
33 costs incurred for services unrelated to the foreclosure of the  
34 association's lien, other collection charges, or specially allocated  
35 assessments assessed under section 317 (6) or (7) of this act does  
36 not cause any such items to be included in the priority amount  
37 affecting such unit.  
38 (4) Subsections (2) and (3) of this section do not affect the  
39 priority of mechanics' or material suppliers' liens to the extent  
40 that law of this state other than this act gives priority to such

1 liens, or the priority of liens for other assessments made by the  
2 association.

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

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

10 (7) Unless the declaration provides otherwise, if two or more  
11 associations have liens for assessments created at any time on the  
12 same property, those liens have equal priority as to each other, and  
13 any foreclosure of one such lien shall not affect the lien of the  
14 other.

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

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

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

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

38 (12) In a cooperative, upon nonpayment of an assessment on a  
39 unit, the unit owner may be evicted in the same manner as provided by

1 law in the case of an unlawful holdover by a commercial tenant, and  
2 the lien may be foreclosed as provided under this section.

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

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

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

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

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

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

33 (a) The association, upon nonpayment of assessments and  
34 compliance with this subsection, may sell that unit at a public sale  
35 or by private negotiation, and at any time and place. The association  
36 must give to the unit owner and any lessee of the unit owner  
37 reasonable notice in a record of the time, date, and place of any  
38 public sale or, if a private sale is intended, of the intention of  
39 entering into a contract to sell and of the time and date after which  
40 a private conveyance may be made. Such notice must also be sent to

1 any other person that has a recorded interest in the unit that would  
2 be cut off by the sale, but only if the recorded interest was on  
3 record seven weeks before the date specified in the notice as the  
4 date of any public sale or seven weeks before the date specified in  
5 the notice as the date after which a private sale may be made. The  
6 notices required under this subsection may be sent to any address  
7 reasonable in the circumstances. A sale may not be held until five  
8 weeks after the sending of the notice. The association may buy at any  
9 public sale and, if the sale is conducted by a fiduciary or other  
10 person not related to the association, at a private sale.

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

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

15 (i) The reasonable expenses of sale;

16 (ii) The reasonable expenses of securing possession before sale;  
17 the reasonable expenses of holding, maintaining, and preparing the  
18 unit for sale, including payment of taxes and other governmental  
19 charges and premiums on insurance; and, to the extent provided for by  
20 agreement between the association and the unit owner, reasonable  
21 attorneys' fees, costs, and other legal expenses incurred by the  
22 association;

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

24 (iv) Satisfaction in the order of priority of any subordinate  
25 claim of record; and

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

27 (d) A good-faith purchaser for value acquires the unit free of  
28 the association's debt that gave rise to the lien under which the  
29 foreclosure sale occurred and any subordinate interest, even though  
30 the association or other person conducting the sale failed to comply  
31 with this section. The person conducting the sale must execute a  
32 conveyance to the purchaser sufficient to convey the unit and stating  
33 that it is executed by the person after a foreclosure of the  
34 association's lien by power of sale and that the person was empowered  
35 to make the sale. Signature and title or authority of the person  
36 signing the conveyance as grantor and a recital of the facts of  
37 nonpayment of the assessment and of the giving of the notices  
38 required under this subsection are sufficient proof of the facts  
39 recited and of the authority to sign. Further proof of authority is

1 not required even though the association is named as grantee in the  
2 conveyance.

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

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

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

31 (17) In addition to constituting a lien on the unit, each  
32 assessment is the joint and several obligation of the unit owner of  
33 the unit to which the same are assessed as of the time the assessment  
34 is due. A unit owner may not exempt himself or herself from liability  
35 for assessments. In a voluntary conveyance other than by foreclosure,  
36 the grantee of a unit is jointly and severally liable with the  
37 grantor for all unpaid assessments against the grantor up to the time  
38 of the grantor's conveyance, without prejudice to the grantee's right  
39 to recover from the grantor the amounts paid by the grantee. Suit to  
40 recover a personal judgment for any delinquent assessment is



1 maintainable in any court of competent jurisdiction without  
2 foreclosing or waiving the lien securing such sums.

3 (18) The association may from time to time establish reasonable  
4 late charges and a rate of interest to be charged, not to exceed the  
5 maximum rate calculated under RCW 19.52.020, on all subsequent  
6 delinquent assessments or installments of assessments. If the  
7 association does not establish such a rate, delinquent assessments  
8 bear interest from the date of delinquency at the maximum rate  
9 calculated under RCW 19.52.020 on the date on which the assessments  
10 became delinquent.

11 (19) The association is entitled to recover any costs and  
12 reasonable attorneys' fees incurred in connection with the collection  
13 of delinquent assessments, whether or not such collection activities  
14 result in a suit being commenced or prosecuted to judgment. The  
15 prevailing party is also entitled to recover costs and reasonable  
16 attorneys' fees in such suits, including any appeals, if it prevails  
17 on appeal and in the enforcement of a judgment.

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

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

23 (a) The unit owner, at the time the action is commenced, owes a  
24 sum equal to at least three months of common expense assessments; and

25 (b) The board approves commencement of a foreclosure action  
26 specifically against that unit.

27 (22) Every aspect of a collection, foreclosure, sale, or other  
28 conveyance under this section, including the method, advertising,  
29 time, date, place, and terms, must be commercially reasonable.

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

32 (a) Except as otherwise provided in (b) of this subsection, a  
33 judgment for money against the association perfected under RCW  
34 4.64.020 is not a lien on the common elements, but is a lien in favor  
35 of the judgment lienholder against all of the other real estate of  
36 the association and all of the units in the common interest community  
37 at the time the judgment was entered. Other property of a unit owner  
38 is not subject to the claims of creditors of the association.

1 (b) If the association has granted a security interest in the  
2 common elements to a creditor of the association pursuant to section  
3 314 of this act, the holder of that security interest must exercise  
4 its right against the common elements before its judgment lien on any  
5 unit may be enforced.

6 (c) Whether perfected before or after the creation of the common  
7 interest community, if a lien, other than a deed of trust or  
8 mortgage, including a judgment lien or lien attributable to work  
9 performed or materials supplied before creation of the common  
10 interest community, becomes effective against two or more units, the  
11 unit owner of an affected unit may pay to the lienholder the amount  
12 of the lien attributable to the unit, and the lienholder, upon  
13 receipt of payment, must promptly deliver a release of the lien  
14 covering that unit. The amount of the payment must be proportionate  
15 to the ratio that the unit owner's common expense liability bears to  
16 the common expense liabilities of all unit owners that are subject to  
17 the lien. After payment, the association may not assess or have a  
18 lien against that unit owner's unit for any portion of the common  
19 expenses incurred in connection with that lien.

20 (d) A judgment against the association must be recorded and  
21 indexed in the name of the common interest community and the  
22 association and, when so indexed, is notice of the lien against the  
23 units.

24 (2) In a cooperative:

25 (a) If the association receives notice of an impending  
26 foreclosure on all or any portion of the association's real estate,  
27 the association must promptly transmit a copy of that notice to each  
28 unit owner of a unit located within the real estate to be foreclosed.  
29 Failure of the association to transmit the notice does not affect the  
30 validity of the foreclosure.

31 (b) Whether a unit owner's unit is subject to the claims of the  
32 association's creditors, other property of a unit owner is not  
33 subject to those claims.

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

36 (a) The current budget, detailed records of receipts and  
37 expenditures affecting the operation and administration of the  
38 association, and other appropriate accounting records within the last  
39 seven years;

1 (b) Minutes of all meetings of its unit owners and board other  
2 than executive sessions, a record of all actions taken by the unit  
3 owners or board without a meeting, and a record of all actions taken  
4 by a committee in place of the board on behalf of the association;

5 (c) The names of current unit owners, addresses used by the  
6 association to communicate with them, and the number of votes  
7 allocated to each unit;

8 (d) Its original or restated declaration, organizational  
9 documents, all amendments to the declaration and organizational  
10 documents, and all rules currently in effect;

11 (e) All financial statements and tax returns of the association  
12 for the past seven years;

13 (f) A list of the names and addresses of its current board  
14 members and officers;

15 (g) Its most recent annual report delivered to the secretary of  
16 state, if any;

17 (h) Financial and other records sufficiently detailed to enable  
18 the association to comply with section 409 of this act;

19 (i) Copies of contracts to which it is or was a party within the  
20 last seven years;

21 (j) Materials relied upon by the board or any committee to  
22 approve or deny any requests for design or architectural approval for  
23 a period of seven years after the decision is made;

24 (k) Materials relied upon by the board or any committee  
25 concerning a decision to enforce the governing documents for a period  
26 of seven years after the decision is made;

27 (l) Copies of insurance policies under which the association is a  
28 named insured;

29 (m) Any current warranties provided to the association;

30 (n) Copies of all notices provided to unit owners or the  
31 association in accordance with this chapter or the governing  
32 documents; and

33 (o) Ballots, proxies, absentee ballots, and other records related  
34 to voting by unit owners for one year after the election, action, or  
35 vote to which they relate.

36 (2) Subject to subsections (3) and (4) of this section, all  
37 records required to be retained by an association must be made  
38 available for examination and copying by all unit owners, holders of  
39 mortgages on the units, and their respective authorized agents as  
40 follows, unless agreed otherwise:

1 (a) During reasonable business hours or at a mutually convenient  
2 time and location; and

3 (b) At the offices of the association or its managing agent.

4 (3) Records retained by an association may be withheld from  
5 inspection and copying to the extent that they concern:

6 (a) Personnel and medical records relating to specific  
7 individuals;

8 (b) Contracts, leases, and other commercial transactions to  
9 purchase or provide goods or services currently being negotiated;

10 (c) Existing or potential litigation or mediation, arbitration,  
11 or administrative proceedings;

12 (d) Existing or potential matters involving federal, state, or  
13 local administrative or other formal proceedings before a  
14 governmental tribunal for enforcement of the governing documents;

15 (e) Legal advice or communications that are otherwise protected  
16 by the attorney-client privilege or the attorney work product  
17 doctrine, including communications with the managing agent or other  
18 agent of the association;

19 (f) Information the disclosure of which would violate a court  
20 order or law;

21 (g) Records of an executive session of the board;

22 (h) Individual unit files other than those of the requesting unit  
23 owner;

24 (i) Unlisted telephone number or electronic address of any unit  
25 owner or resident;

26 (j) Security access information provided to the association for  
27 emergency purposes; or

28 (k) Agreements that for good cause prohibit disclosure to the  
29 members.

30 (4) An association may charge a reasonable fee for producing and  
31 providing copies of any records under this section and for  
32 supervising the unit owner's inspection.

33 (5) A right to copy records under this section includes the right  
34 to receive copies by photocopying or other means, including through  
35 an electronic transmission if available upon request by the unit  
36 owner.

37 (6) An association is not obligated to compile or synthesize  
38 information.

39 (7) Information provided pursuant to this section may not be used  
40 for commercial purposes.

1 (8) An association's managing agent must deliver all of the  
2 association's original books and records to the association  
3 immediately upon termination of its management relationship with the  
4 association, or upon such other demand as is made by the board. An  
5 association managing agent may keep copies of the association records  
6 at its own expense.

7 NEW SECTION. **Sec. 321.** ASSOCIATION AS TRUSTEE. With respect to  
8 a third person dealing with the association in the association's  
9 capacity as a trustee, the existence of trust powers and their proper  
10 exercise by the association may be assumed without inquiry. A third  
11 person is not bound to inquire whether the association has power to  
12 act as trustee or is properly exercising trust powers. A third  
13 person, without actual knowledge that the association is exceeding or  
14 improperly exercising its powers, is fully protected in dealing with  
15 the association as if it possessed and properly exercised the powers  
16 it purports to exercise. A third person is not bound to assure the  
17 proper application of trust assets paid or delivered to the  
18 association in its capacity as trustee.

19 NEW SECTION. **Sec. 322.** RULES. (1) Unless the declaration  
20 provides otherwise, the board must, before adopting, amending, or  
21 repealing any rule, give all unit owners notice of:

22 (a) Its intention to adopt, amend, or repeal a rule and provide  
23 the text of the rule or the proposed change; and

24 (b) A date on which the board will act on the proposed rule or  
25 amendment after considering comments from unit owners.

26 (2) Following adoption, amendment, or repeal of a rule, the  
27 association must give notice to the unit owners of its action and  
28 provide a copy of any new or revised rule.

29 (3) If the declaration so provides, an association may adopt  
30 rules to establish and enforce construction and design criteria and  
31 aesthetic standards and, if so, must adopt procedures for enforcement  
32 of those standards and for approval of construction applications,  
33 including a reasonable time within which the association must act  
34 after an application is submitted and the consequences of its failure  
35 to act.

36 (4) An association's internal business operating procedures need  
37 not be adopted as rules.

38 (5) Every rule must be reasonable.

1        NEW SECTION.    **Sec. 323.**    SPECIFIC LIMITATIONS ON ASSOCIATION'S  
2 REGULATORY AUTHORITY. (1) An association may not prohibit display of  
3 the flag of the United States, or the flag of Washington state, on or  
4 within a unit or a limited common element, except that an association  
5 may adopt reasonable restrictions pertaining to the time, place, or  
6 manner of displaying the flag of the United States necessary to  
7 protect a substantial interest of the association. For purposes of  
8 this section, "flag of the United States" means the flag of the  
9 United States as described in 4 U.S.C. Sec. 1 et seq. that is made of  
10 fabric, cloth, or paper. "Flag of the United States" does not mean a  
11 flag, depiction, or emblem made of lights, paint, roofing, siding,  
12 paving materials, flora, or balloons, or of any similar building,  
13 landscaping, or decorative components.

14        (2) The association may not prohibit display of signs regarding  
15 candidates for public or association office, or ballot issues, on or  
16 within a unit or limited common element, but the association may  
17 adopt rules governing the time, place, size, number, and manner of  
18 those displays.

19        (3) The association may not prohibit the installation of a solar  
20 energy panel on or within a unit so long as the solar panel:

21        (a) Meets applicable health and safety standards and requirements  
22 imposed by state and local permitting authorities;

23        (b) If used to heat water, is certified by the solar rating  
24 certification corporation or another nationally recognized  
25 certification agency. Certification must be for the solar energy  
26 panel and for installation; and

27        (c) If used to produce electricity, meets all applicable safety  
28 and performance standards established by the national electric code,  
29 the institute of electrical and electronics engineers, accredited  
30 testing laboratories, such as underwriters laboratories, and, where  
31 applicable, rules of the utilities and transportation commission  
32 regarding safety and reliability.

33        (4) The governing documents may:

34        (a) Prohibit the visibility of any part of a roof-mounted solar  
35 energy panel above the roof line;

36        (b) Permit the attachment of a solar energy panel to the slope of  
37 a roof facing a street only if:

38        (i) The solar energy panel conforms to the slope of the roof; and

39        (ii) The top edge of the solar energy panel is parallel to the  
40 roof ridge; and

1 (c) Require:

2 (i) A solar energy panel frame, a support bracket, or any visible  
3 piping or wiring to be painted to coordinate with the roofing  
4 material;

5 (ii) A unit owner or resident to shield a ground-mounted solar  
6 energy panel if shielding the panel does not prohibit economic  
7 installation of the solar energy panel or degrade the operational  
8 performance quality of the solar energy panel by more than ten  
9 percent; and

10 (iii) Unit owners or residents who install solar energy panels to  
11 indemnify or reimburse the association or its members for loss or  
12 damage caused by the installation, maintenance, or use of a solar  
13 energy panel.

14 (5) The governing documents may include other reasonable rules  
15 regarding the placement and manner of a solar energy panel.

16 (6) For purposes of this section, "solar energy panel" means a  
17 panel device or system or combination of panel devices or systems  
18 that relies on direct sunlight as an energy source, including a panel  
19 device or system or combination of panel devices or systems that  
20 collects sunlight for use in:

21 (a) The heating or cooling of a structure or building;

22 (b) The heating or pumping of water;

23 (c) Industrial, commercial, or agricultural processes; or

24 (d) The generation of electricity.

25 (7) This section must not be construed to permit installation by  
26 a unit owner of a solar panel on or in common elements without  
27 approval of the board.

28 (8) Unit owners may peacefully assemble on the common elements to  
29 consider matters related to the common interest community, but the  
30 association may adopt rules governing the time, place, and manner of  
31 those assemblies.

32 (9) An association may adopt rules that affect the use or  
33 occupancy of or behavior in units that may be used for residential  
34 purposes, only to:

35 (a) Implement a provision of the declaration;

36 (b) Regulate any behavior in or occupancy of a unit that violates  
37 the declaration or adversely affects the use and enjoyment of other  
38 units or the common elements by other occupants; and

39 (c) Restrict the leasing of residential units to the extent those  
40 rules are reasonably designed to meet underwriting requirements of

1 institutional lenders that regularly make loans secured by first  
2 mortgages on units in comparable common interest communities or that  
3 regularly purchase those mortgages.

4 NEW SECTION. **Sec. 324.** NOTICE. (1) Notice to the association,  
5 board, or any owner or occupant of a unit under this chapter must be  
6 provided in the form of a record.

7 (2) Notice provided in a tangible medium may be transmitted by  
8 mail, private carrier, or personal delivery; telegraph or teletype;  
9 or telephone, wire, or wireless equipment that transmits a facsimile  
10 of the notice.

11 (a) Notice in a tangible medium to an association may be  
12 addressed to the association's registered agent at its registered  
13 office, to the association at its principal office shown in its most  
14 recent annual report or provided by notice to the unit owners, or to  
15 the president or secretary of the association at the address shown in  
16 the association's most recent annual report or provided by notice to  
17 the unit owners.

18 (b) Notice in a tangible medium to a unit owner or occupant must  
19 be addressed to the unit address unless the unit owner or occupant  
20 has requested, in a record delivered to the association, that notices  
21 be sent to an alternate address or by other method allowed by this  
22 section and the governing documents.

23 (3) Notice may be provided in an electronic transmission as  
24 follows:

25 (a) Notice to unit owners or board members by electronic  
26 transmission is effective only upon unit owners and board members who  
27 have consented, in the form of a record, to receive electronically  
28 transmitted notices under this chapter and have designated in the  
29 consent the address, location, or system to which such notices may be  
30 electronically transmitted, provided that such notice otherwise  
31 complies with any other requirements of this chapter and applicable  
32 law.

33 (b) Notice to unit owners or board members under this subsection  
34 includes material that this chapter or the governing documents  
35 requires or permits to accompany the notice.

36 (c) A unit owner or board member who has consented to receipt of  
37 electronically transmitted notices may revoke this consent by  
38 delivering a revocation to the association in the form of a record.



1 (d) The consent of any unit owner or board member is revoked if:  
2 The association is unable to electronically transmit two consecutive  
3 notices given by the association in accordance with the consent, and  
4 this inability becomes known to the secretary of the association or  
5 any other person responsible for giving the notice. The inadvertent  
6 failure by the association to treat this inability as a revocation  
7 does not invalidate any meeting or other action.

8 (e) Notice to unit owners or board members who have consented to  
9 receipt of electronically transmitted notices may be provided by  
10 posting the notice on an electronic network and delivering to the  
11 unit owner or board member a separate record of the posting, together  
12 with comprehensible instructions regarding how to obtain access to  
13 the posting on the electronic network.

14 (f) Notice to an association in an electronic transmission is  
15 effective only with respect to an association that has designated in  
16 a record an address, location, or system to which the notices may be  
17 electronically transmitted.

18 (4) Notice may be given by any other method reasonably calculated  
19 to provide notice to the recipient.

20 (5) Notice is effective as follows:

21 (a) Notice provided in a tangible medium is effective as of the  
22 date of hand delivery, deposit with the carrier, or when sent by fax.

23 (b) Notice provided in an electronic transmission is effective as  
24 of the date it:

25 (i) Is electronically transmitted to an address, location, or  
26 system designated by the recipient for that purpose; or

27 (ii) Has been posted on an electronic network and a separate  
28 record of the posting has been sent to the recipient containing  
29 instructions regarding how to obtain access to the posting on the  
30 electronic network.

31 (6) The ineffectiveness of a good-faith effort to deliver notice  
32 by an authorized means does not invalidate action taken at or without  
33 a meeting.

34 (7) If this chapter prescribes different or additional notice  
35 requirements for particular circumstances, those requirements govern.

36 NEW SECTION. **Sec. 325.** REMOVAL OF OFFICERS AND BOARD MEMBERS.

37 (1) Unit owners present in person, by proxy, or by absentee ballot at  
38 any meeting of the unit owners at which a quorum is present may  
39 remove any board member and any officer elected by the unit owners,

1 with or without cause, if the number of votes in favor of removal  
2 cast by unit owners entitled to vote for election of the board member  
3 or officer proposed to be removed is at least the lesser of (a) a  
4 majority of the votes in the association held by such unit owners or  
5 (b) two-thirds of the votes cast by such unit owners at the meeting,  
6 but:

7 (i) A board member appointed by the declarant may not be removed  
8 by a unit owner vote during any period of declarant control;

9 (ii) A board member appointed under section 305(3) of this act  
10 may be removed only by the person that appointed that member; and

11 (iii) The unit owners may not consider whether to remove a board  
12 member or officer at a meeting of the unit owners unless that subject  
13 was listed in the notice of the meeting.

14 (2) At any meeting at which a vote to remove a board member or  
15 officer is to be taken, the board member or officer being considered  
16 for removal must have a reasonable opportunity to speak before the  
17 vote.

18 (3) At any meeting at which a board member or officer is removed,  
19 the unit owners entitled to vote for the board member or officer may  
20 immediately elect a successor board member or officer consistent with  
21 this chapter.

22 (4) The board may, without a unit owner vote, remove from the  
23 board a board member or officer elected by the unit owners if (a) the  
24 board member or officer is delinquent in the payment of assessments  
25 more than sixty days and (b) the board member or officer has not  
26 cured the delinquency within thirty days after receiving notice of  
27 the board's intent to remove the board member or officer. Unless  
28 provided otherwise by the governing documents, the board may remove  
29 an officer elected by the board at any time, with or without cause.  
30 The removal must be recorded in the minutes of the next board  
31 meeting.

32 NEW SECTION. **Sec. 326.** ADOPTION OF BUDGETS—ASSESSMENTS AND  
33 SPECIAL ASSESSMENTS. (1)(a) Within thirty days after adoption of any  
34 proposed budget for the common interest community, the board must  
35 provide a copy of the budget to all the unit owners and set a date  
36 for a meeting of the unit owners to consider ratification of the  
37 budget not less than fourteen nor more than fifty days after  
38 providing the budget. Unless at that meeting the unit owners of units  
39 to which a majority of the votes in the association are allocated or

1 any larger percentage specified in the declaration reject the budget,  
2 the budget and the assessments against the units included in the  
3 budget are ratified, whether or not a quorum is present.

4 (b) If the proposed budget is rejected or the required notice is  
5 not given, the periodic budget last ratified by the unit owners  
6 continues until the unit owners ratify a subsequent budget proposed  
7 by the board.

8 (2) The budget must include:

9 (a) The projected income to the association by category;

10 (b) The projected common expenses and those specially allocated  
11 expenses that are subject to being budgeted, both by category;

12 (c) The amount of the assessments per unit and the date the  
13 assessments are due;

14 (d) The current amount of regular assessments budgeted for  
15 contribution to the reserve account;

16 (e) A statement of whether the association has a reserve study  
17 that meets the requirements of section 331 of this act and, if so,  
18 the extent to which the budget meets or deviates from the  
19 recommendations of that reserve study; and

20 (f) The current deficiency or surplus in reserve funding  
21 expressed on a per unit basis.

22 (3) The board, at any time, may propose a special assessment. The  
23 assessment is effective only if the board follows the procedures for  
24 ratification of a budget described in subsection (1) of this section  
25 and the unit owners do not reject the proposed assessment. The board  
26 may provide that the special assessment may be due and payable in  
27 installments over any period it determines and may provide a discount  
28 for early payment.

29 NEW SECTION. **Sec. 327.** FINANCIAL STATEMENTS AND ASSOCIATION  
30 FUNDS. (1) The association must prepare, or cause to be prepared, at  
31 least annually, a financial statement of the association in  
32 accordance with accrual based accounting practices.

33 (2) The financial statements of associations with annual  
34 assessments of fifty thousand dollars or more must be audited at  
35 least annually by a certified public accountant. In the case of an  
36 association with annual assessments of less than fifty thousand  
37 dollars, an annual audit is also required but may be waived annually  
38 by unit owners other than the declarant of units to which a majority

1 of the votes in the association are allocated, excluding the votes  
2 allocated to units owned by the declarant.

3 (3) The association must keep all funds of the association in the  
4 name of the association with a qualified financial institution. The  
5 funds must not be commingled with the funds of any other association  
6 or with the funds of any managing agent of the association or any  
7 other person, or be kept in any trust account or custodial account in  
8 the name of any trustee or custodian.

9 (4) A managing agent who accepts or receives funds belonging to  
10 the association must promptly deposit all such funds into an account  
11 maintained by the association as provided in subsection (3) of this  
12 section or section 328 of this act, as appropriate.

13 NEW SECTION. **Sec. 328.** RESERVE ACCOUNT—ESTABLISHMENT. An  
14 association required to obtain a reserve study pursuant to section  
15 330 of this act must establish one or more accounts for the deposit  
16 of funds, if any, for the replacement costs of reserve components.  
17 Any reserve account must be an income-earning account maintained  
18 under the direct control of the board, and the board is responsible  
19 for administering the reserve account.

20 NEW SECTION. **Sec. 329.** RESERVE ACCOUNT—WITHDRAWALS. (1) The  
21 board may withdraw funds from the association's reserve account to  
22 pay for unforeseen or unbudgeted costs that are unrelated to  
23 replacement costs of the reserve components. Any such withdrawal must  
24 be recorded in the minute books of the association. The board must  
25 give notice of any such withdrawal to each unit owner and adopt a  
26 repayment schedule not to exceed twenty-four months unless the board  
27 determines that repayment within twenty-four months would impose an  
28 unreasonable burden on the unit owners. The board must provide to  
29 unit owners along with the annual budget adopted in accordance with  
30 section 326 of this act (a) notice of any such withdrawal, (b) a  
31 statement of the current deficiency in reserve funding expressed on a  
32 per unit basis, and (c) the repayment plan.

33 (2) The board may withdraw funds from the reserve account without  
34 satisfying the notification of repayment requirements under this  
35 section to pay for replacement costs of reserve components not  
36 included in the reserve study.

1        NEW SECTION.    **Sec. 330.**    RESERVE STUDY—PREPARATION. (1) Unless  
2 exempt under subsection (2) of this section, an association must  
3 prepare and update a reserve study in accordance with this chapter.  
4 An initial reserve study must be prepared by a reserve study  
5 professional and based upon either a reserve study professional's  
6 visual site inspection of completed improvements or a review of plans  
7 and specifications of or for unbuilt improvements, or both when  
8 construction of some but not all of the improvements is complete. An  
9 updated reserve study must be prepared annually. An updated reserve  
10 study must be prepared at least every third year by a reserve study  
11 professional and based upon a visual site inspection conducted by the  
12 reserve study professional.

13        (2) Unless the governing documents require otherwise, subsection  
14 (1) of this section does not apply (a) to common interest communities  
15 containing units that are restricted in the declaration to  
16 nonresidential use, (b) to common interest communities that have only  
17 nominal reserve costs, or (c) when the cost of the reserve study or  
18 update exceeds ten percent of the association's annual budget.

19        (3) The governing documents may impose greater requirements on  
20 the board.

21        NEW SECTION.    **Sec. 331.**    RESERVE STUDY—CONTENTS. (1) Any reserve  
22 study is supplemental to the association's operating and maintenance  
23 budget.

24        (2) A reserve study must include:

25        (a) A reserve component list, including any reserve component,  
26 the replacement cost of which exceeds one percent of the annual  
27 budget of the association, excluding contributions to the reserves  
28 for that reserve component. If one of these reserve components is not  
29 included in the reserve study, the study must explain the basis for  
30 its exclusion. The study must also include quantities and estimates  
31 for the useful life of each reserve component, the remaining useful  
32 life of each reserve component, and current major replacement costs  
33 for each reserve component;

34        (b) The date of the study and a disclosure as to whether the  
35 study meets the requirements of this section;

36        (c) The following level of reserve study performed:

37        (i) Level I: Full reserve study funding analysis and plan;

38        (ii) Level II: Update with visual site inspection; or

39        (iii) Level III: Update with no visual site inspection;

- 1 (d) The association's reserve account balance;
- 2 (e) The percentage of the fully funded balance to which the  
3 reserve account is funded;
- 4 (f) Special assessments already implemented or planned;
- 5 (g) Interest and inflation assumptions;
- 6 (h) Current reserve account contribution rates for a full funding  
7 plan and a baseline funding plan;
- 8 (i) A recommended reserve account contribution rate for a full  
9 funding plan to achieve one hundred percent fully funded reserves by  
10 the end of the thirty-year study period, a recommended reserve  
11 account contribution rate for a baseline funding plan to maintain the  
12 reserve account balance above zero throughout the thirty-year study  
13 period without special assessments, and a reserve account  
14 contribution rate recommended by the reserve study professional;
- 15 (j) A projected reserve account balance for thirty years based on  
16 each funding plan presented in the reserve study;
- 17 (k) A disclosure on whether the reserve study was prepared with  
18 the assistance of a reserve study professional, and whether the  
19 reserve study professional was independent; and
- 20 (l) A statement of the amount of any current deficit or surplus  
21 in reserve funding expressed on a dollars per unit basis. The amount  
22 is calculated by subtracting the association's reserve account  
23 balance as of the date of the study from the fully funded balance,  
24 and then multiplying the result by the fraction or percentage of the  
25 common expenses of the association allocable to each unit; except  
26 that if the fraction or percentage of the common expenses of the  
27 association allocable vary by unit, the association must calculate  
28 any current deficit or surplus in a manner that reflects the  
29 variation.

30 (3) A reserve study must also include the following disclosure:

31 "This reserve study should be reviewed carefully. It may not  
32 include all common and limited common element components that will  
33 require major maintenance, repair, or replacement in future years,  
34 and may not include regular contributions to a reserve account for  
35 the cost of such maintenance, repair, or replacement. The failure to  
36 include a component in a reserve study, or to provide contributions  
37 to a reserve account for a component, may, under some circumstances,  
38 require the association to (1) defer major maintenance, repair, or  
39 replacement, (2) increase future reserve contributions, (3) borrow  
40 funds to pay for major maintenance, repair, or replacement, or (4)

1 impose special assessments for the cost of major maintenance, repair,  
2 or replacement."

3 NEW SECTION. **Sec. 332.** RESERVE STUDY—DEMAND BY UNIT OWNERS—  
4 ACTION TO ENFORCE. (1) When more than three years have passed since  
5 the date of the last reserve study prepared by a reserve study  
6 professional, unit owners of units to which at least twenty percent  
7 of the votes in the association are allocated may demand in a record  
8 delivered to the board that the cost of a reserve study be included  
9 in the next annual budget and that the study be prepared by the end  
10 of that budget year. The demand must refer to this section. The board  
11 must, upon receipt of the demand, include the cost of a reserve study  
12 in the next budget and, if that budget is not rejected by the unit  
13 owners pursuant to section 326 of this act, arrange for the  
14 preparation of a reserve study.

15 (2) One or more unit owners may bring an action to enforce the  
16 requirements of this section and sections 330 and 331 of this act. In  
17 such an action, a court may order specific performance and may award  
18 reasonable attorneys' fees and costs to the prevailing party.

19 (3) A unit owner's duty to pay assessments is not excused because  
20 of the association's failure to comply with this section and sections  
21 330 and 331 of this act. A budget ratified by the unit owners  
22 pursuant to section 326 of this act is not invalidated because of the  
23 association's failure to comply with this section and sections 330  
24 and 331 of this act.

25 NEW SECTION. **Sec. 333.** RESERVE STUDY—RESERVE ACCOUNT—IMMUNITY  
26 FROM LIABILITY. Except for an award for attorneys' fees and costs  
27 under section 332(2) of this act, monetary damages or other liability  
28 may not be awarded against or imposed upon the association or its  
29 officers or board members, or upon any person who may have provided  
30 advice or assistance to the association or its officers or board  
31 members, for failure to: Establish or replenish a reserve account,  
32 have a current reserve study prepared or updated in accordance with  
33 the requirements of this chapter, or make reserve disclosures in  
34 accordance with this chapter.

35 **IV. PROTECTION OF PURCHASERS**

1        NEW SECTION.    **Sec. 401.**    APPLICABILITY—WAIVER. (1) Sections 402  
2 through 420 of this act apply to all units subject to this chapter,  
3 except as provided in subsections (2) and (3) of this section.

4        (2) Sections 402 through 420 of this act do not apply in the case  
5 of:

6            (a) A conveyance by gift, devise, or descent;

7            (b) A conveyance pursuant to court order;

8            (c) A conveyance by a government or governmental agency;

9            (d) A conveyance by foreclosure;

10          (e) A conveyance of all of the units in a common interest  
11 community in a single transaction;

12          (f) A conveyance to other than a purchaser;

13          (g) An agreement to convey that may be canceled at any time and  
14 for any reason by the purchaser without penalty;

15          (h) A conveyance of a unit restricted to nonresidential uses,  
16 except and to the extent otherwise agreed to in writing by the seller  
17 and purchaser of that unit.

18        (3) Sections 414, 415, 416, 417, 419, and 420 of this act apply  
19 only to condominiums created under this chapter, and do not apply to  
20 other common interest communities.

21        NEW SECTION.    **Sec. 402.**    LIABILITY FOR PUBLIC OFFERING STATEMENT  
22 REQUIREMENTS. (1) Except as provided otherwise in subsection (2) of  
23 this section, a declarant required to deliver a public offering  
24 statement pursuant to subsection (3) of this section must prepare a  
25 public offering statement conforming to the requirements of sections  
26 403, 404, and 405 of this act.

27        (2) A declarant may transfer responsibility for preparation of  
28 all or a part of the public offering statement to a successor  
29 declarant or to a dealer who intends to offer units in the  
30 condominium.

31        (3)(a) Any declarant or dealer who offers to convey a unit for  
32 the person's own account to a purchaser must provide the purchaser of  
33 the unit with a copy of a public offering statement and all material  
34 amendments to the public offering statement before conveyance of that  
35 unit.

36        (b) Any agent, attorney, or other person assisting the declarant  
37 or dealer in preparing the public offering statement may rely upon  
38 information provided by the declarant or dealer without independent  
39 investigation. The agent, attorney, or other person is not liable for



1 any material misrepresentation in or omissions of material facts from  
2 the public offering statement unless the person had actual knowledge  
3 of the misrepresentation or omission at the time the public offering  
4 statement was prepared.

5 (c) The declarant or dealer is liable for any misrepresentation  
6 contained in the public offering statement or for any omission of  
7 material fact from the public offering statement if the declarant or  
8 dealer had actual knowledge of the misrepresentation or omission or,  
9 in the exercise of reasonable care, should have known of the  
10 misrepresentation or omission.

11 (4) If a unit is part of a common interest community and is part  
12 of any other real estate regime in connection with the sale of which  
13 the delivery of a public offering statement is required under the  
14 laws of this state, a single public offering statement conforming to  
15 the requirements of sections 403, 404, and 405 of this act as those  
16 requirements relate to each regime in which the unit is located, and  
17 to any other requirements imposed under the laws of this state, may  
18 be prepared and delivered in lieu of providing two or more public  
19 offering statements.

20 (5) A declarant is not required to prepare and deliver a public  
21 offering statement in connection with the sale of any unit owned by  
22 the declarant, or to obtain for or provide to the purchaser a report  
23 or statement required under sections 403(1)(oo), 405(1), or 412 of  
24 this act, upon the later of:

25 (a) The termination or expiration of all special declarant  
26 rights;

27 (b) The expiration of all periods within which claims or actions  
28 for a breach of warranty arising from defects involving the common  
29 elements under section 417 of this act must be filed or commenced,  
30 respectively, by the association against the declarant; or

31 (c) The time when the declarant ceases to meet the definition of  
32 a dealer under section 102 of this act.

33 (6) After the last to occur of any of the events described in  
34 subsection (5) of this section, a declarant must deliver to the  
35 purchaser of a unit owned by the declarant a resale certificate under  
36 section 409(2) of this act together with:

37 (a) The identification of any real property not in the common  
38 interest community that unit owners have a right to use and a  
39 description of the terms of such use;

1 (b) A brief description or a copy of any express construction  
2 warranties to be provided to the purchaser;

3 (c) A statement of any litigation brought by an owners'  
4 association, unit owner, or governmental entity in which the  
5 declarant or any affiliate of the declarant has been a defendant  
6 arising out of the construction, sale, or administration of any  
7 common interest community within the state of Washington within the  
8 previous five years, together with the results of the litigation, if  
9 known;

10 (d) Whether timesharing is permitted or prohibited, and, if  
11 permitted, a statement that the purchaser of a time share unit is  
12 entitled to receive the disclosure document required under chapter  
13 64.36 RCW; and

14 (e) Any other information and cross-references that the declarant  
15 believes will be helpful in describing the common interest community  
16 to the purchaser, all of which may be included or not included at the  
17 option of the declarant.

18 (7) A declarant is not liable to a purchaser for the failure or  
19 delay of the association to provide the resale certificate in a  
20 timely manner, but the purchase contract is voidable by the purchaser  
21 of a unit sold by the declarant until the resale certificate required  
22 under section 409(2) of this act and the information required under  
23 subsection (6) of this section have been provided and for five days  
24 thereafter or until conveyance, whichever occurs first.

25 NEW SECTION. **Sec. 403.** PUBLIC OFFERING STATEMENT—GENERAL  
26 PROVISIONS. (1) A public offering statement must contain the  
27 following information:

28 (a) The name and address of the declarant;

29 (b) The name and address or location of the management company,  
30 if any;

31 (c) The relationship of the management company to the declarant,  
32 if any;

33 (d) The name and address of the common interest community;

34 (e) A statement whether the common interest community is a  
35 condominium, cooperative, plat community, or miscellaneous community;

36 (f) A list, current as of the date the public offering statement  
37 is prepared, of up to the five most recent common interest  
38 communities in which at least one unit was sold by the declarant or

1 an affiliate of the declarant within the past five years, including  
2 the names of the common interest communities and their addresses;

3 (g) The nature of the interest being offered for sale;

4 (h) A general description of the common interest community,  
5 including to the extent known to the declarant, the types and number  
6 of buildings that the declarant anticipates including in the common  
7 interest community and the declarant's schedule of commencement and  
8 completion of such buildings and principal common amenities;

9 (i) The status of construction of the units and common elements,  
10 including estimated dates of completion if not completed;

11 (j) The number of existing units in the common interest  
12 community;

13 (k) Brief descriptions of (i) the existing principal common  
14 amenities, (ii) those amenities that will be added to the common  
15 interest community, and (iii) those amenities that may be added to  
16 the common interest community;

17 (l) A brief description of the limited common elements, other  
18 than those described in section 203 (1)(b) and (3) of this act, that  
19 may be allocated to the units being offered for sale;

20 (m) The identification of any rights of persons other than unit  
21 owners to use any of the common elements, and a description of the  
22 terms of such use;

23 (n) The identification of any real property not in the common  
24 interest community that unit owners have a right to use and a  
25 description of the terms of such use;

26 (o) Any services the declarant provides or expenses that the  
27 declarant pays that are not reflected in the budget, but that the  
28 declarant expects may become at any subsequent time a common expense  
29 of the association, and the projected common expense attributable to  
30 each of those services or expenses;

31 (p) An estimate of any assessment or payment required by the  
32 declaration to be paid by the purchaser of a unit at closing;

33 (q) A brief description of any liens or monetary encumbrances on  
34 the title to the common elements that will not be discharged at  
35 closing;

36 (r) A brief description or a copy of any express construction  
37 warranties to be provided to the purchaser;

38 (s) A statement, as required under RCW 64.35.210, as to whether  
39 the units or common elements of the common interest community are  
40 covered by a qualified warranty;

1 (t) If applicable to the common interest community, a statement  
2 whether the common interest community contains any multiunit  
3 residential building subject to chapter 64.55 RCW and, if so,  
4 whether:

5 (i) The building enclosure has been designed and inspected to the  
6 extent required under RCW 64.55.010 through 64.55.090; and

7 (ii) Any repairs required under RCW 64.55.090 have been made;

8 (u) A statement of any unsatisfied judgments or pending suits  
9 against the association and the status of any pending suits material  
10 to the common interest community of which the declarant has actual  
11 knowledge;

12 (v) A statement of any litigation brought by an owners'  
13 association, unit owner, or governmental entity in which the  
14 declarant or any affiliate of the declarant has been a defendant  
15 arising out of the construction, sale, or administration of any  
16 common interest community within the previous five years, together  
17 with the results of the litigation, if known;

18 (w) A brief description of:

19 (i) Any restrictions on use or occupancy of the units contained  
20 in the governing documents;

21 (ii) Any restrictions on the renting or leasing of units by the  
22 declarant or other unit owners contained in the governing documents;

23 (iii) Any rights of first refusal to lease or purchase any unit  
24 or any of the common elements contained in the governing documents;  
25 and

26 (iv) Any restriction on the amount for which a unit may be sold  
27 or on the amount that may be received by a unit owner on sale;

28 (x) A description of the insurance coverage provided for the  
29 benefit of unit owners;

30 (y) Any current or expected fees or charges not included in the  
31 common expenses to be paid by unit owners for the use of the common  
32 elements and other facilities related to the common interest  
33 community, together with any fees or charges not included in the  
34 common expenses to be paid by unit owners to any master or other  
35 association;

36 (z) The extent, if any, to which bonds or other assurances from  
37 third parties have been provided for completion of all improvements  
38 that the declarant is obligated to build pursuant to section 420 of  
39 this act;

1 (aa) In a cooperative, a statement whether the unit owners are  
2 entitled, for federal, state, and local income tax purposes, to a  
3 pass-through of any deductions for payments made by the association  
4 for real estate taxes and interest paid to the holder of a security  
5 interest encumbering the cooperative;

6 (bb) In a cooperative, a statement as to the effect on every unit  
7 owner's interest in the cooperative if the association fails to pay  
8 real estate taxes or payments due to the holder of a security  
9 interest encumbering the cooperative;

10 (cc) In a leasehold common interest community, a statement  
11 whether the expiration or termination of any lease may terminate the  
12 common interest community or reduce its size, the recording number of  
13 any such lease or a statement of where the complete lease may be  
14 inspected, the date on which such lease is scheduled to expire, a  
15 description of the real estate subject to such lease, a statement  
16 whether the unit owners have a right to redeem the reversion, a  
17 statement whether the unit owners have a right to remove any  
18 improvements at the expiration or termination of such lease, a  
19 statement of any rights of the unit owners to renew such lease, and a  
20 reference to the sections of the declaration where such information  
21 may be found;

22 (dd) A summary of, and information on how to obtain a full copy  
23 of, any reserve study and a statement as to whether or not it was  
24 prepared in accordance with sections 330 and 331 of this act or the  
25 governing documents;

26 (ee) A brief description of any arrangement described in section  
27 123 of this act binding the association;

28 (ff) The estimated current common expense liability for the units  
29 being offered;

30 (gg) Except for real property taxes, real property assessments  
31 and utility liens, any assessments, fees, or other charges known to  
32 the declarant and which, if not paid, may constitute a lien against  
33 any unit or common elements in favor of any governmental agency;

34 (hh) A brief description of any parts of the common interest  
35 community, other than the owner's unit, which any owner must  
36 maintain;

37 (ii) Whether timesharing is permitted or prohibited, and, if  
38 permitted, a statement that the purchaser of a timeshare unit is  
39 entitled to receive the disclosure document required under chapter  
40 64.36 RCW;

1 (jj) If the common interest community is subject to any special  
2 declarant rights, the information required under section 404 of this  
3 act;

4 (kk) Any liens on real estate to be conveyed to the association  
5 required to be disclosed pursuant to section 411(3)(b) of this act;

6 (ll) A list of any physical hazards known to the declarant that  
7 particularly affect the common interest community or the immediate  
8 vicinity in which the common interest community is located and which  
9 are not readily ascertainable by the purchaser;

10 (mm) Any building code violation of which the declarant has  
11 actual knowledge and which has not been corrected;

12 (nn) If the common interest community contains one or more  
13 conversion buildings, the information required under sections 405 and  
14 412(6)(a) of this act;

15 (oo) If the public offering statement is related to conveyance of  
16 a unit in a multiunit residential building as defined in RCW  
17 64.55.010, for which the final certificate of occupancy was issued  
18 more than sixty calendar months prior to the preparation of the  
19 public offering statement either: A copy of a report prepared by an  
20 independent, licensed architect or engineer or a statement by the  
21 declarant based on such report that describes, to the extent  
22 reasonably ascertainable, the present condition of all structural  
23 components and mechanical and electrical installations of the  
24 conversion buildings material to the use and enjoyment of the  
25 conversion buildings;

26 (pp) Any other information and cross-references that the  
27 declarant believes will be helpful in describing the common interest  
28 community to the recipients of the public offering statement, all of  
29 which may be included or not included at the option of the declarant;  
30 and

31 (qq) A description of any age-related occupancy restrictions  
32 affecting the common interest community.

33 (2) The public offering statement must begin with notices  
34 substantially in the following forms and in conspicuous type:

35 (a) "RIGHT TO CANCEL. (1) You are entitled to receive a copy of  
36 this public offering statement and all material amendments to this  
37 public offering statement before conveyance of your unit. Under  
38 section 408 of this act, you have the right to cancel your contract  
39 for the purchase of your unit within seven days after first receiving  
40 this public offering statement. If this public offering statement is

1 first provided to you more than seven days before you sign your  
2 contract for the purchase of your unit, you have no right to cancel  
3 your contract. If this public offering statement is first provided to  
4 you seven days or less before you sign your contract for the purchase  
5 of your unit, you have the right to cancel, before conveyance of the  
6 unit, the executed contract by delivering, no later than the seventh  
7 day after first receiving this public offering statement, a notice of  
8 cancellation pursuant to section (3) of this notice. If this public  
9 offering statement is first provided to you less than seven days  
10 before the closing date for the conveyance of your unit, you may,  
11 before conveyance of your unit to you, extend the closing date to a  
12 date not more than seven days after you first received this public  
13 offering statement, so that you may have seven days to cancel your  
14 contract for the purchase of your unit.

15 (2) You have no right to cancel your contract upon receipt of an  
16 amendment to this public offering statement; however, this does not  
17 eliminate any right to rescind your contract, due to the disclosure  
18 of the information in the amendment, that is otherwise available to  
19 you under generally applicable contract law.

20 (3) If you elect to cancel your contract pursuant to this notice,  
21 you may do so by hand-delivering notice of cancellation, or by  
22 mailing notice of cancellation by prepaid United States mail, to the  
23 seller at the address set forth in this public offering statement or  
24 at the address of the seller's registered agent for service of  
25 process. The date of such notice is the date of receipt, if hand-  
26 delivered, or the date of deposit in the United States mail, if  
27 mailed. Cancellation is without penalty, and all payments made to the  
28 seller by you before cancellation must be refunded promptly."

29 (b) "OTHER DOCUMENTS CREATING BINDING LEGAL OBLIGATIONS. This  
30 public offering statement is a summary of some of the significant  
31 aspects of purchasing a unit in this common interest community. The  
32 governing documents and the purchase agreement are complex, contain  
33 other important information, and create binding legal obligations.  
34 You should consider seeking the assistance of legal counsel."

35 (c) "OTHER REPRESENTATIONS. You may not rely on any statement,  
36 promise, model, depiction, or description unless it is (1) contained  
37 in the public offering statement delivered to you or (2) made in  
38 writing signed by the declarant or dealer or the declarant's or  
39 dealer's agent identified in the public offering statement. A  
40 statement of opinion, or a commendation of the real estate, its

1 quality, or its value, does not create a warranty, and a statement,  
2 promise, model, depiction, or description does not create a warranty  
3 if it discloses that it is only proposed, is not representative, or  
4 is subject to change."

5 (d) "MODEL UNITS. Model units are intended to provide you with a  
6 general idea of what a finished unit might look like. Units being  
7 offered for sale may vary from the model unit in terms of floor plan,  
8 fixtures, finishes, and equipment. You are advised to obtain specific  
9 information about the unit you are considering purchasing."

10 (e) "RESERVE STUDY. The association [does] [does not] have a  
11 current reserve study. Any reserve study should be reviewed  
12 carefully. It may not include all reserve components that will  
13 require major maintenance, repair, or replacement in future years,  
14 and may not include regular contributions to a reserve account for  
15 the cost of such maintenance, repair, or replacement. You may  
16 encounter certain risks, including being required to pay as a special  
17 assessment your share of expenses for the cost of major maintenance,  
18 repair, or replacement of a reserve component, as a result of the  
19 failure to: (1) Have a current reserve study or fully funded  
20 reserves, (2) include a component in a reserve study, or (3) provide  
21 any or sufficient contributions to a reserve account for a  
22 component."

23 (f) "DEPOSITS AND PAYMENTS. Only earnest money and reservation  
24 deposits are required to be placed in an escrow or trust account. Any  
25 other payments you make to the seller of a unit are at risk and may  
26 be lost if the seller defaults."

27 (g) "CONSTRUCTION DEFECT CLAIMS. Chapter 64.50 RCW contains  
28 important requirements you must follow before you may file a lawsuit  
29 for defective construction against the seller or builder of your  
30 home. Forty-five days before you file your lawsuit, you must deliver  
31 to the seller or builder a written notice of any construction  
32 conditions you allege are defective and provide your seller or  
33 builder the opportunity to make an offer to repair or pay for the  
34 defects. You are not obligated to accept any offer made by the  
35 builder or seller. There are strict deadlines and procedures under  
36 state law, and failure to follow them may affect your ability to file  
37 a lawsuit."

38 (h) "ASSOCIATION INSURANCE. The extent to which association  
39 insurance provides coverage for the benefit of unit owners (including  
40 furnishings, fixtures, and equipment in a unit) is determined by the



1 provisions of the declaration and the association's insurance policy,  
2 which may be modified from time to time. You and your personal  
3 insurance agent should read the declaration and the association's  
4 policy prior to closing to determine what insurance is required of  
5 the association and unit owners, unit owners' rights and duties, what  
6 is and is not covered by the association's policy, and what  
7 additional insurance you should obtain."

8 (i) "QUALIFIED WARRANTY. Your unit [is] [is not] covered by a  
9 qualified warranty under chapter 64.35 RCW. "

10 (3) The public offering statement must include copies of each of  
11 the following documents: The declaration; the survey; the  
12 organizational documents; the rules and regulations, if any; the  
13 current or proposed budget for the association; a dated balance sheet  
14 of the association; any inspection and repair report or reports  
15 prepared in accordance with the requirements of RCW 64.55.090; and  
16 any qualified warranty provided to a purchaser by a declarant  
17 together with a history of claims under the qualified warranty. If  
18 any of these documents are not in final form, the documents must be  
19 marked "draft" and, before closing the sale of a unit, the purchaser  
20 must be given notice of any material changes to the draft documents.

21 (4) A declarant must promptly amend the public offering statement  
22 to reflect any material change in the information required under this  
23 section.

24 NEW SECTION. **Sec. 404.** PUBLIC OFFERING STATEMENT—COMMON  
25 INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS. If the  
26 declaration provides that a common interest community is subject to  
27 any development rights or if the declarant reserves any special  
28 declarant rights, the public offering statement must include, in  
29 addition to the information required under section 403 of this act:

30 (1) A statement of all development rights and special declarant  
31 rights reserved to the declarant, together with the dates or other  
32 circumstances under which such rights must terminate; and

33 (2) A statement describing how the allocated interests of a unit  
34 may be changed by the exercise of any development right.

35 NEW SECTION. **Sec. 405.** PUBLIC OFFERING STATEMENT—COMMON  
36 INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS. (1) A public  
37 offering statement for a unit in a conversion building must contain,

1 in addition to the information required under sections 403, 404, and  
2 412(6)(a) of this act:

3 (a) Either a copy of a report prepared by an independent,  
4 licensed architect or engineer or a statement by the declarant based  
5 on such report that describes, to the extent reasonably  
6 ascertainable, the present condition of all structural components and  
7 mechanical and electrical installations material to the use and  
8 enjoyment of the common interest community;

9 (b) A statement by the declarant or dealer of the expected useful  
10 life of each item reported on in (a) of this subsection or a  
11 statement that no representations are made in that regard;

12 (c) A copy of any inspection and repair report for the conversion  
13 building required under RCW 64.55.090, if applicable;

14 (d) A list of any outstanding notices of uncured violations of  
15 building code or other municipal ordinances and regulations, together  
16 with the estimated cost of curing those violations and a statement  
17 that such list is not a representation that the conversion building  
18 is in compliance with the current building code or other municipal  
19 ordinances and regulations;

20 (e) A statement of the improvements to the conversion building  
21 made or contracted for by the declarant or dealer, or affiliate of  
22 either, offering the unit for sale; and

23 (f) The current deficiency or surplus in reserve funding  
24 expressed on a per unit basis.

25 (2) The obligation to provide the information required in  
26 subsection (1) of this section as to any particular conversion  
27 building ceases on the earlier of (a) the date when all units in the  
28 building have been conveyed to persons other than the declarant or a  
29 dealer, or any affiliate of the declarant or dealer, or (b) the date  
30 set forth in section 402(5) of this act.

31 NEW SECTION. **Sec. 406.** PUBLIC OFFERING STATEMENT—USE OF SINGLE  
32 DISCLOSURE DOCUMENT. If a unit is offered for sale for which the  
33 delivery of a public offering statement or other disclosure document  
34 is required under the laws of any state or the United States, a  
35 single disclosure document conforming to the requirements of sections  
36 403, 404, and 405 of this act and conforming to any other requirement  
37 imposed under such laws may be prepared and delivered in lieu of  
38 providing two or more disclosure documents.

1           NEW SECTION.    **Sec. 407.**   PUBLIC OFFERING STATEMENT—CONTRACT OF  
2 SALE—RESTRICTION ON INTEREST CONVEYED. In the case of a sale of a  
3 unit in which delivery of a public offering statement is required, a  
4 contract of sale may be executed unless otherwise prohibited by  
5 applicable law, but interest in that unit may not be conveyed until:

6           (1) The declaration and map that create the common interest  
7 community in which that unit is located are recorded pursuant to  
8 sections 201(1) and 210(3) of this act; and

9           (2) In the case of a unit in a building containing that unit or a  
10 building comprising that unit, the unit is substantially completed  
11 and available for occupancy, and all structural components and  
12 mechanical systems of the building containing or comprising that unit  
13 are substantially completed, but a declarant or dealer and a  
14 purchaser may otherwise specifically agree in writing as to the  
15 extent to which the unit will not be substantially completed and  
16 available and to which any structural components and mechanical  
17 systems will not be substantially completed at the time of  
18 conveyance.

19           NEW SECTION.    **Sec. 408.**   PURCHASER'S RIGHT TO CANCEL. (1) The  
20 purchaser may cancel a contract for the purchase of the unit within  
21 seven days after first receiving the public offering statement. If  
22 the public offering statement is first provided to a purchaser more  
23 than seven days before execution of a contract for the purchase of a  
24 unit, the purchaser does not have the right under this section to  
25 cancel the executed contract. If the public offering statement is  
26 first provided to a purchaser seven days or less before the purchaser  
27 signs a contract for the purchase of a unit, the purchaser, before  
28 conveyance of the unit to the purchaser, may cancel the contract by  
29 delivering, no later than the seventh day after first receiving the  
30 public offering statement, a notice of cancellation, delivered  
31 pursuant to subsection (3) of this section. If the public offering  
32 statement is first provided to a purchaser less than seven days  
33 before the closing date for the conveyance of that unit, the  
34 purchaser may, before conveyance of the unit to the purchaser, extend  
35 the closing date to a date not more than seven days after the  
36 purchaser first received the public offering statement.

37           (2) A purchaser does not have the right under this section to  
38 cancel a contract upon receipt of an amendment to a public offering  
39 statement. This subsection must not be construed to eliminate any

1 right that is otherwise available to the purchaser under generally  
2 applicable contract law to rescind the contract due to the disclosure  
3 of the information in the amendment.

4 (3) If a purchaser elects to cancel a contract under subsection  
5 (1) of this section, the purchaser may do so by hand-delivering  
6 notice of cancellation, or by mailing notice of cancellation by  
7 prepaid United States mail, to the declarant at the address set forth  
8 in the public offering statement or at the address of the declarant's  
9 registered agent for service of process. The date of such notice is  
10 the date of receipt of delivery, if hand-delivered, or the date of  
11 deposit in the United States mail, if mailed. Cancellation is without  
12 penalty, and all payments made to the seller by the purchaser before  
13 cancellation must be refunded promptly. There is no liability for  
14 failure to deliver any amendment unless such failure would have  
15 entitled the purchaser under generally applicable legal principles to  
16 cancel the contract for the purchase of the unit had the undisclosed  
17 information been evident to the purchaser before the closing of the  
18 purchase.

19 (4) The language of the notice required under section 403(2)(a)  
20 of this act must not be construed to modify the rights set forth in  
21 this section.

22 NEW SECTION. **Sec. 409.** RESALES OF UNITS. (1) Except in the case  
23 of a sale when delivery of a public offering statement is required,  
24 or unless exempt under section 401(2) of this act, a unit owner must  
25 furnish to a purchaser before execution of any contract for sale of a  
26 unit, or otherwise before conveyance, a resale certificate, signed by  
27 an officer or authorized agent of the association and based on the  
28 books and records of the association and the actual knowledge of the  
29 person signing the certificate, containing:

30 (a) A statement disclosing any right of first refusal or other  
31 restraint on the free alienability of the unit contained in the  
32 declaration;

33 (b) With respect to the selling unit owner's unit, a statement  
34 setting forth the amount of any assessment currently due, any  
35 delinquent assessments, and a statement of any special assessments  
36 that have been levied and have not been paid even though not yet due;

37 (c) A statement, which must be current to within forty-five days,  
38 of any assessments against any unit in the condominium that are past  
39 due over thirty days;

1 (d) A statement, which must be current to within forty-five days,  
2 of any monetary obligation of the association that is past due over  
3 thirty days;

4 (e) A statement of any other fees payable to the association by  
5 unit owners;

6 (f) A statement of any expenditure or anticipated repair or  
7 replacement cost reasonably anticipated to be in excess of five  
8 percent of the board-approved annual budget of the association,  
9 regardless of whether the unit owners are entitled to approve such  
10 cost;

11 (g) A statement whether the association does or does not have a  
12 reserve study prepared in accordance with sections 330 and 331 of  
13 this act;

14 (h) The annual financial statement of the association, including  
15 the audit report if it has been prepared, for the year immediately  
16 preceding the current year;

17 (i) The most recent balance sheet and revenue and expense  
18 statement, if any, of the association;

19 (j) The current operating budget of the association;

20 (k) A statement of any unsatisfied judgments against the  
21 association and the status of any legal actions in which the  
22 association is a party or a claimant as defined in RCW 64.50.010;

23 (l) A statement describing any insurance coverage carried by the  
24 association and contact information for the association's insurance  
25 broker or agent;

26 (m) A statement as to whether the board has given or received  
27 notice in a record that any existing uses, occupancies, alterations,  
28 or improvements in or to the seller's unit or to the limited common  
29 elements allocated to the unit violate any provision of the governing  
30 documents;

31 (n) A statement of the number of units, if any, still owned by  
32 the declarant, whether the declarant has transferred control of the  
33 association to the unit owners, and the date of such transfer;

34 (o) A statement as to whether the board has received notice in a  
35 record from a governmental agency of any violation of environmental,  
36 health, or building codes with respect to the seller's unit, the  
37 limited common elements allocated to that unit, or any other portion  
38 of the common interest community that has not been cured;

1 (p) A statement of the remaining term of any leasehold estate  
2 affecting the common interest community and the provisions governing  
3 any extension or renewal of the leasehold estate;

4 (q) A statement of any restrictions in the declaration affecting  
5 the amount that may be received by a unit owner upon sale;

6 (r) In a cooperative, an accountant's statement, if any was  
7 prepared, as to the deductibility for federal income tax purposes by  
8 the unit owner of real estate taxes and interest paid by the  
9 association;

10 (s) A statement describing any pending sale or encumbrance of  
11 common elements;

12 (t) A statement disclosing the effect on the unit to be conveyed  
13 of any restrictions on the owner's right to use or occupy the unit or  
14 to lease the unit to another person;

15 (u) A copy of the declaration, the organizational documents, the  
16 rules or regulations of the association, the minutes of board  
17 meetings and association meetings, except for any information exempt  
18 from disclosure under section 320(3) of this act, for the last twelve  
19 months, a summary of the current reserve study for the association,  
20 and any other information reasonably requested by mortgagees of  
21 prospective purchasers of units. Information requested generally by  
22 the federal national mortgage association, the federal home loan bank  
23 board, the government national mortgage association, the veterans  
24 administration, or the department of housing and urban development is  
25 deemed reasonable if the information is reasonably available to the  
26 association;

27 (v) A statement whether the units or common elements of the  
28 common interest community are covered by a qualified warranty under  
29 chapter 64.35 RCW and, if so, a history of claims known to the  
30 association as having been made under any such warranty;

31 (w) A description of any age-related occupancy restrictions  
32 affecting the common interest community; and

33 (x) If the association does not have a reserve study that has  
34 been prepared in accordance with sections 330 and 331 of this act or  
35 its governing documents, the following disclosure:

36 "This association does not have a current reserve study. The lack  
37 of a current reserve study poses certain risks to you, the purchaser.  
38 Insufficient reserves may, under some circumstances, require you to  
39 pay on demand as a special assessment your share of common expenses

1 for the cost of major maintenance, repair, or replacement of a common  
2 element."

3 (2) The association, within ten days after a request by a unit  
4 owner, and subject to the payment of any fees imposed pursuant to  
5 section 302(2)(m) of this act, must furnish a resale certificate  
6 signed by an officer or authorized agent of the association and  
7 containing the information necessary to enable the unit owner to  
8 comply with this section. For the purposes of this chapter, a  
9 reasonable charge for the preparation of a resale certificate may not  
10 exceed two hundred seventy-five dollars. The association may charge a  
11 unit owner a nominal fee not to exceed one hundred dollars for  
12 updating a resale certificate within six months of the unit owner's  
13 request. A unit owner is not liable to the purchaser for any  
14 erroneous information provided by the association and included in the  
15 certificate.

16 (3)(a) A purchaser is not liable for any unpaid assessment or fee  
17 greater than the amount set forth in the certificate prepared by the  
18 association.

19 (b) A unit owner is not liable to a purchaser for the failure or  
20 delay of the association to provide the certificate in a timely  
21 manner, but the purchase contract is voidable by the purchaser until  
22 the certificate has been provided and for five days thereafter or  
23 until conveyance, whichever occurs first.

24 NEW SECTION. **Sec. 410.** ESCROW OF DEPOSITS. Any earnest money  
25 deposit, as defined in RCW 64.04.005, or any reservation deposit made  
26 in connection with the right to purchase a unit from a person  
27 required to deliver a public offering statement pursuant to section  
28 402(3) of this act must be placed in escrow and held in this state in  
29 an escrow or trust account designated solely for that purpose by a  
30 licensed title insurance company or agent, a licensed attorney, a  
31 real estate broker or independent bonded escrow company, or an  
32 institution whose accounts are insured by a governmental agency or  
33 instrumentality until: (1) Delivered to the declarant at closing, (2)  
34 delivered to the declarant because of the purchaser's default under a  
35 contract to purchase the unit, (3) refunded to the purchaser, or (4)  
36 delivered to a court in connection with the filing of an interpleader  
37 action.

1        NEW SECTION.    **Sec. 411.**    RELEASE OF LIENS. (1) In the case of a  
2 sale of a unit when delivery of a public offering statement is  
3 required pursuant to section 402(3) of this act and subject to  
4 subsection (2) of this section, a seller before conveying a unit:

5        (a) Must record or furnish to the purchaser releases of all liens  
6 that encumber:

7        (i) In a condominium, that unit and its common element interest;  
8 and

9        (ii) In a cooperative, plat community, or miscellaneous  
10 community, that unit and any limited common elements assigned to that  
11 unit; or

12        (b) Must provide the purchaser of that unit with title insurance  
13 from a licensed title insurance company against any lien not released  
14 pursuant to (a) of this subsection.

15        (2) Subsection (1) of this section does not apply to liens that  
16 encumber:

17        (a) Real estate that a declarant has the right to withdraw from  
18 the common interest community;

19        (b) In a condominium, the unit and its common element interest  
20 being purchased, but no other unit, if the purchaser expressly agrees  
21 in writing to take subject to or assume such lien;

22        (c) In a cooperative, plat community, or miscellaneous community,  
23 the unit and any limited common element allocated to the unit being  
24 purchased, but no other unit, if the purchaser expressly agrees in  
25 writing to take subject to or assume such lien.

26        (3) Before conveying real property to the association, the  
27 declarant must have that real property released from:

28        (a) All liens the foreclosure of which would deprive unit owners  
29 of any right of access to or easement of support of their units; and

30        (b) All other liens on that real property unless the public  
31 offering statement describes certain real property that may be  
32 conveyed subject to liens in specified amounts.

33        NEW SECTION.    **Sec. 412.**    CONVERSION BUILDINGS—TENANT RIGHTS.

34 (1)(a) A declarant or dealer who intends to offer units in a  
35 conversion building must give each of the residential tenants and any  
36 residential subtenants in possession of a portion of a conversion  
37 building notice of the conversion and provide those persons with the  
38 public offering statement no later than one hundred twenty days



1 before the tenants and any subtenants in possession are required to  
2 vacate. The notice must:

3 (i) Set forth generally the rights of residential tenants and  
4 residential subtenants under this section;

5 (ii) Be delivered pursuant to notice requirements set forth in  
6 RCW 59.12.040;

7 (iii) Expressly state whether there is a county or city  
8 relocation assistance program for residential tenants or residential  
9 subtenants of conversion buildings in the jurisdiction in which the  
10 property is located. If the county or city does have a relocation  
11 assistance program, the following must also be included in the  
12 notice:

13 (A) A summary of the terms and conditions under which relocation  
14 assistance is paid; and

15 (B) Contact information for the city or county relocation  
16 assistance program, which must include, at a minimum, a telephone  
17 number of the city or county department that administers the  
18 relocation assistance program for conversion buildings.

19 (b) A residential tenant or residential subtenant may not be  
20 required to vacate upon less than one hundred twenty days' notice,  
21 except by reason of nonpayment of rent, waste, or conduct that  
22 disturbs other residential tenants' or residential subtenants'  
23 peaceful enjoyment of the premises, or act of unlawful detainer as  
24 defined in RCW 59.12.030, and the terms of the tenancy may not be  
25 altered during that period except as provided in (c) of this  
26 subsection.

27 (c) At the declarant's option, the declarant may provide all  
28 residential tenants and residential subtenants in a single conversion  
29 building with an option to terminate their lease or rental agreements  
30 without cause or consequence after providing the declarant with  
31 thirty days' notice. In such case, residential tenants and  
32 residential subtenants continue to have access to relocation  
33 assistance under subsection (6)(e)(i) of this section.

34 (d)(i) Nothing in this subsection (1) waives or repeals RCW  
35 59.18.200(2)(b).

36 (ii) Failure to give notice as required under this section is a  
37 defense to an action for possession.

38 (e) The city or county in which the property is located may  
39 require the declarant to forward a copy of the conversion notice  
40 required in this subsection (1) to the appropriately designated

1 department or agency in the city or county for the purpose of  
2 maintaining a list of common interest communities containing  
3 conversion buildings in the jurisdiction.

4 (2)(a) For sixty days after delivery or mailing of the notice  
5 described in subsection (1) of this section, the person required to  
6 give the notice must offer to convey each unit or proposed unit  
7 occupied for residential use to the residential tenant or residential  
8 subtenant who leases that unit. If a residential tenant or  
9 residential subtenant fails to purchase the unit during that sixty-  
10 day period, the offeror may offer to dispose of an interest in that  
11 unit during the following one hundred eighty days at a price or on  
12 terms more favorable to the offeree than the price or terms offered  
13 to the residential tenant or residential subtenant only if:

14 (i) Such offeror, by written notice mailed to the residential  
15 tenant's or residential subtenant's last known address, offers to  
16 sell an interest in that unit at the more favorable price and terms;  
17 and

18 (ii) Such residential tenant or residential subtenant fails to  
19 accept the offer in writing within ten days following the mailing of  
20 the offer to the tenant or subtenant.

21 (b) This subsection (2) does not apply to any unit in a  
22 conversion building if that unit will be restricted exclusively to  
23 nonresidential use or the boundaries of the converted unit do not  
24 substantially conform to the dimensions of the residential unit  
25 before conversion.

26 (3) If a seller, in violation of subsection (2) of this section,  
27 conveys a unit to a purchaser for value who has no actual knowledge  
28 of the violation, the recording of the deed conveying the unit, or,  
29 in a cooperative, the conveyance of the unit, extinguishes any right  
30 a residential tenant or residential subtenant may have under  
31 subsection (2) of this section to purchase that unit, but does not  
32 affect the right of a residential tenant or residential subtenant to  
33 recover damages from the seller for a violation of subsection (2) of  
34 this section.

35 (4) If a notice of conversion specifies a date by which a unit or  
36 proposed unit must be vacated and otherwise complies with this  
37 chapter and chapter 59.18 RCW, the notice also constitutes a notice  
38 to vacate specified under chapter 59.18 RCW.

39 (5) This section does not permit termination of a lease or  
40 sublease by a declarant in violation of its terms.

1 (6) Notwithstanding section 105 of this act, a city or county may  
2 by appropriate ordinance require with respect to any conversion  
3 building within the jurisdiction of the city or county that:

4 (a) In addition to the statement required under section 405(1)(a)  
5 of this act, the public offering statement must contain a copy of a  
6 written inspection report of that building prepared by the  
7 appropriate department of the city or county listing any violations  
8 of the housing code or other governmental regulation that is  
9 applicable regardless of whether the real property is owned as a  
10 common interest community or in some other form of ownership. The  
11 inspection must be made within forty-five days of the declarant's  
12 written request, and the report must be issued within fourteen days  
13 of the inspection being made. The inspection may not be required with  
14 respect to any building for which a final certificate of occupancy  
15 has been issued by the city or county within the preceding twenty-  
16 four months, and any fee imposed for the making of such inspection  
17 may not exceed the fee that would be imposed for the making of such  
18 an inspection for a purpose other than complying with this subsection  
19 (6)(a).

20 (b) Prior to the conveyance of any residential unit within a  
21 conversion building, other than a conveyance to a declarant or  
22 dealer, or affiliate of either:

23 (i) All violations disclosed in the inspection report provided  
24 for in (a) of this subsection, and not otherwise waived by the city  
25 or county, must be repaired; and

26 (ii) A certification must be obtained from the city or county  
27 that such repairs have been made. The certification must be based on  
28 a reinspection to be made within seven days of the declarant's  
29 written request and be issued within seven days of the reinspection  
30 being made;

31 (c) The repairs required to be made under (b) of this subsection  
32 must be warranted by the declarant against defects due to workmanship  
33 or materials for a period of one year following the completion of  
34 such repairs;

35 (d) Prior to the conveyance of any residential unit within a  
36 conversion building, other than a conveyance to a declarant or  
37 dealer, or affiliate of either:

38 (i) The declarant must establish and maintain, during the one-  
39 year warranty period provided under (c) of this subsection, an

1 account containing a sum equal to ten percent of the actual cost of  
2 making the repairs required under (b) of this subsection;

3 (ii) During the one-year warranty period, the funds in the  
4 account must be used exclusively for paying the actual cost of making  
5 repairs required, or for otherwise satisfying claims made, under such  
6 warranty;

7 (iii) Following the expiration of the one-year warranty period,  
8 any funds remaining in the account must be immediately disbursed to  
9 the declarant; and

10 (iv) The declarant must notify in writing the association and the  
11 city or county as to the location of the account and any  
12 disbursements from the account;

13 (e)(i) A declarant must pay relocation assistance, in an amount  
14 to be determined by the city or county, which may not exceed a sum  
15 equal to three months of the residential tenant's or residential  
16 subtenant's rent at the time the conversion notice required under  
17 subsection (1) of this section is received, to residential tenants or  
18 residential subtenants:

19 (A) Who do not elect to purchase a unit in the common interest  
20 community;

21 (B) Who are in lawful occupancy for residential purposes of a  
22 unit in the conversion building; and

23 (C) Whose annual household income from all sources, on the date  
24 of the notice described in subsection (1) of this section, was less  
25 than an amount equal to eighty percent of:

26 (I) The annual median income for comparably sized households in  
27 the standard metropolitan statistical area, as defined and  
28 established by the United States department of housing and urban  
29 development, in which the conversion building is located; or

30 (II) If the conversion building is not within a standard  
31 metropolitan statistical area, the annual median income for  
32 comparably sized households in the state of Washington, as defined  
33 and determined by said department.

34 The household size of a unit must be based on the number of  
35 persons actually in lawful occupancy of the unit. The residential  
36 tenant or residential subtenant actually in lawful occupancy of the  
37 unit is entitled to the relocation assistance. Relocation assistance  
38 must be paid on or before the date the residential tenant or  
39 residential subtenant vacates and is in addition to any damage  
40 deposit or other compensation or refund to which the residential

1 tenant or residential subtenant is otherwise entitled. Unpaid rent or  
2 other amounts owed by the residential tenant or residential subtenant  
3 to the landlord may be offset against the relocation assistance.

4 (ii) Elderly residential tenants or residential subtenants and  
5 residential tenants or residential subtenants with special needs who  
6 otherwise meet the requirements of (e)(i)(A) of this subsection must  
7 receive relocation assistance, the greater of:

8 (A) The sum described in (e)(i) of this subsection; or

9 (B) The sum of actual relocation expenses of the residential  
10 tenant or residential subtenant, up to a maximum of one thousand five  
11 hundred dollars in excess of the sum described in (e)(i) of this  
12 subsection, which may include costs associated with the physical  
13 move, first month's rent, and the security deposit for the dwelling  
14 unit to which the residential tenant or residential subtenant is  
15 relocating, rent differentials for up to a six-month period, and any  
16 other reasonable costs or fees associated with the relocation.  
17 Receipts for relocation expenses must be provided to the declarant by  
18 eligible residential tenants or residential subtenants, and  
19 declarants must provide the relocation assistance to residential  
20 tenants or residential subtenants in a timely manner. The city or  
21 county may provide additional guidelines for the relocation  
22 assistance.

23 (iii) For the purposes of this subsection (6)(e):

24 (A) "Elderly" means a person who is at least sixty-five years of  
25 age; and

26 (B) "Special needs" means a chronic mental illness or physical  
27 disability, a developmental disability, or other condition affecting  
28 cognition, disease, chemical dependency, or a medical condition that  
29 is permanent, not reversible or curable, or is long lasting, and  
30 severely limits a person's mental or physical capacity for self-care;

31 (f) Except as authorized under (g) of this subsection, a  
32 declarant and any dealer may not begin any construction, remodeling,  
33 or repairs to any interior portion of an occupied building that is to  
34 become a conversion building during the one hundred twenty-day notice  
35 period provided for in subsection (1) of this section unless all  
36 residential tenants and residential subtenants who have elected not  
37 to purchase a unit in the common interest community and who are in  
38 lawful occupancy in the building have vacated the premises. For the  
39 purposes of this subsection:

1 (i) "Construction, remodeling, or repairs" means the work that is  
2 done for the purpose of establishing or selling units in a conversion  
3 building, and does not mean the work that is done to maintain the  
4 building or lot for the residential use of the existing residential  
5 tenants or residential subtenants; and

6 (ii) "Occupied building" means a stand-alone structure occupied  
7 by residential tenants or residential subtenants and does not include  
8 other stand-alone buildings located on the property or detached  
9 common area facilities; and

10 (g)(i) If a declarant or dealer has offered existing residential  
11 tenants or residential subtenants an option to terminate an existing  
12 lease or rental agreement without cause or consequence as authorized  
13 under subsection (1)(c) of this section, a declarant and any dealer  
14 may begin construction, remodeling, or repairs to interior portions  
15 of an occupied building (A) to repair or remodel vacant units to be  
16 used as model units, if the repair or remodel is limited to one model  
17 for each unit type in the building; (B) to repair or remodel a vacant  
18 unit or common element for use as a sales office; or (C) to do both.

19 (ii) The work performed under this subsection (6)(g) must not  
20 violate the residential tenants' or residential subtenants' rights of  
21 quiet enjoyment during the one hundred twenty-day notice period.

22 (7) Violations of any city or county ordinance adopted as  
23 authorized under subsection (6) of this section gives rise to such  
24 remedies, penalties, and causes of action that may be lawfully  
25 imposed by the city or county. Such violations do not invalidate the  
26 creation of the common interest community or the conveyance of any  
27 interest in the common interest community.

28 NEW SECTION. **Sec. 413.** CONVERSION COMMON INTEREST COMMUNITY  
29 PROJECT—REPORT. (1) All cities and counties planning under RCW  
30 36.70A.040, which have inspected any conversion buildings or managed  
31 the payment of relocation assistance within the jurisdiction within  
32 the previous twelve-month period, must report annually to the  
33 department of commerce the following information:

34 (a) The total number of apartment units converted into common  
35 interest community units;

36 (b) The total number of conversion common interest community  
37 projects; and

38 (c) The total number of residential tenants and residential  
39 subtenants who receive relocation assistance.

1 (2) Upon completion of a conversion common interest community  
2 project, a city or county may require the declarant to provide the  
3 information described in subsection (1)(a) and (c) of this section  
4 for the converted common interest community to the appropriately  
5 designated department or agency in the city or county for the purpose  
6 of complying with subsection (1) of this section.

7 NEW SECTION. **Sec. 414.** EXPRESS WARRANTIES OF QUALITY. (1)  
8 Subject to subsections (2) and (3) of this section, express  
9 warranties made by any declarant or dealer to a purchaser of a unit  
10 in a condominium, if relied upon by the purchaser in purchasing the  
11 unit, are created as follows:

12 (a) Any written affirmation of fact or written promise that  
13 relates to the unit, its use, or rights appurtenant to the unit or  
14 its use, improvements to the condominium that would directly benefit  
15 the unit, or the right to use or have the benefit of facilities not  
16 located in the condominium creates an express warranty that the unit  
17 and related rights and uses will not materially deviate from the  
18 affirmation or promise.

19 (b) Any written description of the physical characteristics of  
20 the condominium at the time the purchase agreement is executed,  
21 including plans and specifications of or for improvements, creates an  
22 express warranty that the condominium will conform to the written  
23 description in all material respects.

24 (c) Any written description of the quantity or extent of the real  
25 estate comprising the condominium, including plats or surveys,  
26 creates an express warranty that the condominium will conform to the  
27 description, subject to customary tolerances.

28 (d) A written statement that a purchaser may put a unit only to a  
29 specified use is an express warranty that the specified use is  
30 lawful.

31 (2) Subject to subsection (3) of this section, neither formal  
32 words, such as "warranty" or "guarantee," nor a specific intention to  
33 make a warranty are necessary to create an express warranty, but a  
34 statement of opinion or a commendation of the real estate, its  
35 quality, or its value does not create a warranty, and a statement,  
36 promise, model, depiction, or description does not create a warranty  
37 if it discloses that it is only proposed, is not representative, or  
38 is subject to change.

1 (3) A purchaser may not rely on any statement, affirmation,  
2 promise, model, depiction, or description unless it is contained in  
3 the public offering statement delivered to the purchaser or made in a  
4 record signed by the declarant or dealer, or the declarant's or  
5 dealer's agent identified in the public offering statement.

6 (4) Any conveyance of a unit transfers to the purchaser all  
7 express warranties of quality made by the declarant or dealer.

8 NEW SECTION. **Sec. 415.** IMPLIED WARRANTIES OF QUALITY. (1) A  
9 declarant and any dealer warrants to a purchaser of a condominium  
10 unit that the unit will be in at least as good condition at the  
11 earlier of the time of the conveyance or delivery of possession as it  
12 was at the time of contracting, except for reasonable wear and tear  
13 and damage by casualty or condemnation.

14 (2) A declarant and any dealer impliedly warrants to a purchaser  
15 of a condominium unit that the unit and the common elements in the  
16 condominium are suitable for the ordinary uses of real estate of its  
17 type and that any improvements made or contracted for by such  
18 declarant or dealer will be:

19 (a) Free from defective materials;

20 (b) Constructed in accordance with sound engineering and  
21 construction standards;

22 (c) Constructed in a workmanlike manner; and

23 (d) Constructed in compliance with all laws then applicable to  
24 such improvements.

25 (3) A declarant and any dealer warrants to a purchaser of a  
26 condominium unit that may be used for residential use that an  
27 existing use, continuation of which is contemplated by the parties,  
28 does not violate applicable law at the earlier of the time of  
29 conveyance or delivery of possession.

30 (4) Warranties imposed under this section may be excluded or  
31 modified as specified in section 416 of this act.

32 (5) For purposes of this section, improvements made or contracted  
33 for by an affiliate of a declarant are made or contracted for by the  
34 declarant.

35 (6) Any conveyance of a condominium unit transfers to the  
36 purchaser all of a declarant's or dealer's implied warranties of  
37 quality.

38 (7)(a) In a proceeding for breach of any of the obligations  
39 arising under this section, the plaintiff must show that the alleged



1 breach has adversely affected or will adversely affect the  
2 performance of that portion of the unit or common elements alleged to  
3 be in breach.

4 (b) As used in this subsection, an adverse effect must be more  
5 than technical and must be significant to a reasonable person. To  
6 establish an adverse effect, the person alleging the breach is not  
7 required to prove that the breach renders the unit or common element  
8 uninhabitable or unfit for its intended purpose.

9 (8) Proof of breach of any obligation arising under this section  
10 is not proof of damages. Damages awarded for a breach of an  
11 obligation arising under this section are the reasonable cost of  
12 repairs. However, if it is established that the cost of such repairs  
13 is clearly disproportionate to the loss in market value caused by the  
14 breach, damages are limited to the loss in market value.

15 NEW SECTION. **Sec. 416.** EXCLUSION OR MODIFICATION OF IMPLIED  
16 WARRANTIES OF QUALITY. (1) Except as limited under subsection (2) of  
17 this section with respect to a purchaser of a condominium unit that  
18 may be used for residential use, implied warranties of quality under  
19 section 415 of this act:

20 (a) May be excluded or modified by written agreement of the  
21 parties; and

22 (b) Are excluded by written expression of disclaimer, such as "as  
23 is," "with all faults," or other language that in common  
24 understanding calls the buyer's attention to the exclusion of  
25 warranties.

26 (2) With respect to a purchaser of a condominium unit that may be  
27 used for residential use, no disclaimer of implied warranties of  
28 quality under section 415 of this act is effective, except that a  
29 declarant and any dealer may disclaim liability in an instrument for  
30 one or more specified defects or failures to comply with applicable  
31 law, if:

32 (a) The declarant or dealer knows or has reason to believe that  
33 the specific defects or failures exist at the time of disclosure;

34 (b) The disclaimer specifically describes the defects or  
35 failures;

36 (c) The disclaimer includes a statement as to the effect of the  
37 defects or failures;

1 (d) The disclaimer is bold faced, capitalized, underlined, or  
2 otherwise set out from surrounding material so as to be conspicuous;  
3 and

4 (e) The disclaimer is signed by the purchaser.

5 (3) A declarant or dealer may not make an express written  
6 warranty of quality that limits the implied warranties of quality  
7 made to the purchaser set forth in section 415 of this act.

8 NEW SECTION. **Sec. 417.** WARRANTIES OF QUALITY—BREACH—ACTIONS

9 FOR CONSTRUCTION DEFECT CLAIMS. (1) A proceeding for breach of any  
10 obligations arising under section 414, 415, or 416 of this act must  
11 be commenced within four years after the cause of action accrues. The  
12 period for commencing an action for a breach accruing pursuant to  
13 subsection (2)(a) of this section does not expire prior to one year  
14 after termination of the period of declarant control, if any, under  
15 section 304 of this act. Such periods may not be reduced by either  
16 oral or written agreement or through the use of contractual claims or  
17 notice procedures that require the filing or service of any claim or  
18 notice prior to the expiration of the period specified in this  
19 section.

20 (2) Subject to subsection (3) of this section, a cause of action  
21 for breach of warranty of quality, regardless of the purchaser's lack  
22 of knowledge of the breach, accrues:

23 (a) As to a unit, the latest of:

24 (i) The date the unit was conveyed to the purchaser to whom the  
25 warranty is first made; or

26 (ii) The date any portion of the unit that constitutes a building  
27 enclosure as defined in RCW 64.55.010(3) was completed; and

28 (b) As to each common element, at the latest of:

29 (i) The date the common element was completed;

30 (ii) The date the common element was added to the condominium; or

31 (iii) The date the first unit in the condominium was conveyed to  
32 a bona fide purchaser.

33 (3) If a warranty of quality explicitly extends to future  
34 performance or duration of any improvement or component of the  
35 condominium, the cause of action accrues at the time the breach is  
36 discovered or at the end of the period for which the warranty  
37 explicitly extends, whichever is earlier.

38 (4) If a written notice of claim is served under RCW 64.50.020  
39 within the time prescribed for the filing of an action under this

1 chapter, the statutes of limitation in this chapter and any  
2 applicable statutes of repose for construction-related claims are  
3 tolled until sixty days after the period of time during which the  
4 filing of an action is barred under RCW 64.50.020.

5 NEW SECTION. **Sec. 418.** EFFECT OF VIOLATIONS ON RIGHTS OF ACTION  
6 —ATTORNEYS' FEES. (1) A declarant, association, unit owner, or any  
7 other person subject to this chapter may bring an action to enforce a  
8 right granted or obligation imposed under this chapter or the  
9 governing documents. The court may award reasonable attorneys' fees  
10 and costs.

11 (2) Parties to a dispute arising under this chapter or the  
12 governing documents may agree at any time to resolve the dispute by  
13 any form of binding or nonbinding alternative dispute resolution.

14 NEW SECTION. **Sec. 419.** LABELING OF PROMOTIONAL MATERIAL.  
15 Promotional material may not be displayed or delivered to prospective  
16 purchasers of a condominium unit that describes or portrays an  
17 unbuilt contemplated improvement in the condominium unless the  
18 description or portrayal of the improvement in the promotional  
19 material is conspicuously labeled or identified either as "MUST BE  
20 BUILT" or as "NEED NOT BE BUILT" or words to that effect.

21 NEW SECTION. **Sec. 420.** IMPROVEMENTS—DECLARANT'S DUTIES. (1)  
22 Except for improvements labeled "NEED NOT BE BUILT" on the map in  
23 conformity to section 210(9) of this act, the declarant must complete  
24 all improvements depicted on the map or other graphic representation  
25 of a condominium, if the map or other graphic representation is  
26 contained in the public offering statement or in any promotional  
27 material approved or authorized by the declarant with respect to the  
28 condominium.

29 (2) The declarant is subject to liability for the prompt repair  
30 and restoration, to a condition compatible with the remainder of the  
31 condominium, of any portion of the condominium damaged by the  
32 exercise of rights reserved pursuant to or created under sections 211  
33 through 217 of this act.

34 **V. MISCELLANEOUS**

1       **Sec. 501.** RCW 6.13.080 and 2013 c 23 s 2 are each amended to  
2 read as follows:

3       The homestead exemption is not available against an execution or  
4 forced sale in satisfaction of judgments obtained:

5       (1) On debts secured by mechanic's, laborer's, construction,  
6 maritime, automobile repair, material supplier's, or vendor's liens  
7 arising out of and against the particular property claimed as a  
8 homestead;

9       (2) On debts secured (a) by security agreements describing as  
10 collateral the property that is claimed as a homestead or (b) by  
11 mortgages or deeds of trust on the premises that have been executed  
12 and acknowledged by both spouses or both domestic partners or by any  
13 claimant not married or in a state registered domestic partnership;

14       (3) On one spouse's or one domestic partner's or the community's  
15 debts existing at the time of that spouse's or that domestic  
16 partner's bankruptcy filing where (a) bankruptcy is filed by both  
17 spouses or both domestic partners within a six-month period, other  
18 than in a joint case or a case in which their assets are jointly  
19 administered, and (b) the other spouse or other domestic partner  
20 exempts property from property of the estate under the bankruptcy  
21 exemption provisions of 11 U.S.C. Sec. 522(d);

22       (4) On debts arising from a lawful court order or decree or  
23 administrative order establishing a child support obligation or  
24 obligation to pay maintenance;

25       (5) On debts owing to the state of Washington for recovery of  
26 medical assistance correctly paid on behalf of an individual  
27 consistent with 42 U.S.C. Sec. 1396p;

28       (6) On debts secured by (~~(a condominium's or homeowner)~~) an  
29 association's lien(~~(. In order for an association to be exempt under~~  
30 ~~this provision, the association must have provided a homeowner with~~  
31 ~~notice that nonpayment of the association's assessment may result in~~  
32 ~~foreclosure of the association lien and that the homestead protection~~  
33 ~~under this chapter shall not apply. An association has complied with~~  
34 ~~this notice requirement by mailing the notice, by first-class mail,~~  
35 ~~to the address of the owner's lot or unit. The notice required in~~  
36 ~~this subsection shall be given within thirty days from the date the~~  
37 ~~association learns of a new owner, but in all cases the notice must~~  
38 ~~be given prior to the initiation of a foreclosure. The phrase "learns~~  
39 ~~of a new owner" in this subsection means actual knowledge of the~~  
40 ~~identity of a homeowner acquiring title after June 9, 1988, and does~~

1 ~~not require that an association affirmatively ascertain the identity~~  
2 ~~of a homeowner. Failure to give the notice specified in this~~  
3 ~~subsection affects an association's lien only for debts accrued up to~~  
4 ~~the time an association complies with the notice provisions under~~  
5 ~~this subsection)); or~~

6 (7) On debts owed for taxes collected under chapters 82.08,  
7 82.12, and 82.14 RCW but not remitted to the department of revenue.

8 NEW SECTION. Sec. 502. A new section is added to chapter 59.18  
9 RCW to read as follows:

10 This chapter does not apply to any proprietary lease as defined  
11 in section 102 of this act:

- 12 (1) Created after the effective date of this section; or  
13 (2) If the lessor has amended its governing documents to provide  
14 that chapter 64.--- RCW (the new chapter created in section 506 of  
15 this act) will apply to the common interest community pursuant to  
16 section 120 of this act.

17 NEW SECTION. Sec. 503. A new section is added to chapter 64.32  
18 RCW to read as follows:

19 This chapter does not apply to common interest communities as  
20 defined in section 102 of this act:

- 21 (1) Created after the effective date of this section; or  
22 (2) That have amended their governing documents to provide that  
23 chapter 64.--- RCW (the new chapter created in section 506 of this  
24 act) will apply to the common interest community pursuant to section  
25 120 of this act.

26 NEW SECTION. Sec. 504. A new section is added to chapter 64.34  
27 RCW to read as follows:

28 This chapter does not apply to common interest communities as  
29 defined in section 102 of this act:

- 30 (1) Created after the effective date of this section; or  
31 (2) That have amended their governing documents to provide that  
32 chapter 64.--- RCW (the new chapter created in section 506 of this  
33 act) will apply to the common interest community pursuant to section  
34 120 of this act.

35 NEW SECTION. Sec. 505. A new section is added to chapter 64.38  
36 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; or  
4 (2) That have amended their governing documents to provide that  
5 chapter 64.--- RCW (the new chapter created in section 506 of this  
6 act) will apply to the common interest community pursuant to section  
7 120 of this act.

8 NEW SECTION. **Sec. 506.** Sections 101 through 420 of this act  
9 constitute a new chapter in Title 64 RCW.

10 NEW SECTION. **Sec. 507.** This act takes effect July 1, 2018."

11 Correct the title.

EFFECT: Retains the underlying bill with the following changes:

(1) Amends section 120 of the act with respect to the opt-in procedure for amending the governing documents of an existing common interest community (CIC) to provide that the CIC will be governed by the new WUCIOA chapter, setting forth a step-by-step process regarding who can propose/request, preparation of the amendment, notices, meeting, and votes required.

(2) Amends Section 318 (Lien for Sums Due Association - Enforcement) to: Add a provision that an association's lien for unpaid assessments does not affect the priority of mechanics' or material suppliers' liens to the extent that the law of this state other than WUCIOA gives priority to such liens, or the priority of liens for other assessments made by the association; clarify the priority when two or more associations have liens for assessments created at any time on the same property; strike the provision that an association must give notice required by statute, or if not specified, reasonable notice, to lienholders; strike the provision that specified the order in which associations must apply any sums paid by unit owners who are delinquent in paying assessments; and add a provision that every aspect of a collection, foreclosure, sale, or other conveyance under section 318 must be commercially reasonable.

(3) Makes changes in warranty sections 415-417 of the act to: Refer to "proceedings" rather than "judicial proceedings;" use the term "disclaimer" rather than "instrument;" and strike redundant language requiring a signature by the purchaser.

(4) Rewords sections 503-505 of the act regarding when current law governing CICs applies/does not apply, providing that current chapters do not apply to: CICs created after the effective date of the act or to CICs that have amended their governing documents to provide that the new WUCIOA chapter applies. Similarly rewords section 502 of the act regarding proprietary leases and the application of the Residential Landlord Tenant Act (RLTA).

(5) Corrects a statutory reference to the RLTA.

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