

ESB 6744 - H AMD 1525

By Representative Lantz

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

3 "Sec. 1. RCW 64.38.005 and 1995 c 283 s 1 are each amended to read
4 as follows:

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

10 NEW SECTION. Sec. 2. A new section is added to chapter 64.38 RCW
11 to read as follows:

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

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

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

20 For purposes of this chapter:

21 (1) "Homeowners' association" or "association" means a corporation,
22 unincorporated association, or other legal entity, each member of which
23 is an owner of residential real property located within the
24 association's jurisdiction, as described in the governing documents,
25 and by virtue of membership (~~(or ownership of property)~~), the owner is
26 obligated to pay (~~(real property taxes, insurance premiums, maintenance~~
27 ~~costs, or for improvement of real property other than that which is~~

1 ~~owned by the member~~) assessments pursuant to the governing documents.
2 "Homeowners' association" does not mean an association created under
3 chapter 64.32 or 64.34 RCW.

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

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

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

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

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

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

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

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

24 (c) Costs of collection, including reasonable attorneys' fees,
25 incurred by the association in connection with the collection of an
26 owner's delinquent account.

27 This subsection (7) supersedes any inconsistent provision in the
28 governing documents.

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

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

37 (10) "Cooperative" means a community in which the residential real

1 property is owned by an association where each of those members is
2 entitled, by virtue of his or her ownership interest in the
3 association, to exclusive possession of a portion of the property.

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

8 (12) "Declaration" means the declaration of covenants, conditions,
9 and restrictions or any other document, however denominated, that is
10 recorded in every county in which any portion of the community is
11 located and that provides for the establishment of an association to
12 govern the community. In the case of a cooperative, "declaration"
13 means the document or documents, however denominated, that create the
14 cooperative housing association that owns the residential real property
15 comprising the cooperative, whether or not the document or documents
16 are recorded.

17 (13) "Lot" means a physical portion of a community designated for
18 separate ownership or occupancy and designated for residential use, the
19 boundaries of which are described in the real property records of every
20 county in which any portion of the community is located. Within a
21 cooperative, "lot" means that portion of the community designated for
22 exclusive possession by a member of the cooperative's association.
23 "Lot" does not mean an apartment created under chapter 64.32 RCW or a
24 unit created under chapter 64.34 RCW.

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

29 (15) "Person" means a natural person, corporation, partnership,
30 limited partnership, trust, government subdivision or agency, or other
31 legal entity.

32 (16) "Rules" means the rules, regulations, and policies,
33 irrespective of their designated name, that are adopted by the members
34 of the board of an association in accordance with the governing
35 documents and that supplement, but do not contradict or contravene, the
36 governing documents.

1 for sale of residential real property in which the lot is subject to
2 this chapter the following notice:

3 "BY PURCHASING THE RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF THIS
4 AGREEMENT, YOU WILL BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT
5 GOVERNS THE COMMUNITY IN WHICH THE PROPERTY IS LOCATED. THE
6 ASSOCIATION MAY MAINTAIN AND REPAIR COMMON AREAS, RESTRICT THE USE OF
7 YOUR PROPERTY, COLLECT DUES, AND APPROVE OR DISAPPROVE BUILDING PLANS."

8 (2) The notice is not required in real property transfers that
9 occur between commercial buyers and sellers or those transfers listed
10 in RCW 64.06.010.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 64.38 RCW
12 to read as follows:

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

28 (2) This section applies retroactively to any governing documents
29 in effect on the effective date of this section.

30 (3) This section supersedes any provisions of the governing
31 documents that are inconsistent with this section. All such
32 inconsistent provisions of the governing documents are void and
33 unenforceable.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 64.38 RCW
35 to read as follows:

1 For declarations that exist before the effective date of this
2 section:

3 (1) If a declaration requires more than seventy-five percent of the
4 votes in the association to approve any amendment to the declaration,
5 the association shall, if so directed by owners holding at least sixty-
6 seven percent of the votes in the association, bring an action in
7 superior court for the county in which any portion of the real property
8 subject to the declaration is located, to reduce the percentage of
9 votes required to amend the declaration. The owners' decision to bring
10 an action may, notwithstanding any provision to the contrary in the
11 declaration, be made by votes cast at a meeting of the association duly
12 called or by written consent, or by both. The action shall be an in
13 rem declaratory judgment action whose title shall be the description of
14 the property subject to the declaration.

15 (2) If the court finds that the percentage of votes set forth in
16 the declaration is an unreasonable burden on the ability of the owners
17 to amend the declaration and of the association to administer the
18 property under its jurisdiction, the court shall enter an order
19 striking the percentage of votes from the declaration and substituting
20 the percentage of votes that the court determines to be appropriate in
21 the circumstances. The court shall not mandate approval of less than
22 sixty-seven percent of the votes in the association to amend any
23 provision of the declaration.

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

26 (1) Except as provided in subsection (2) of this section, a
27 declaration recorded after the effective date of this section may be
28 amended with the approval of at least sixty-seven percent of the total
29 votes in the association, or any larger percentage specified in the
30 declaration.

31 (2) A declarant may unilaterally amend the declaration, but only if
32 the right to amend is clearly stated in the declaration and if the
33 amendment:

34 (a) Subjects additional property to the declaration pursuant to a
35 plan of expansion set forth in the declaration;

36 (b) Withdraws property from the declaration, if the withdrawal is

1 allowed under the terms of the declaration and if the property to be
2 withdrawn is not owned by any third party;

3 (c) Brings any provision of the declaration into compliance with
4 any applicable statute, rule, regulation, or judicial determination;

5 (d) Enables any title insurance company to issue title insurance
6 coverage for the lots;

7 (e) Enables any institutional or governmental lender, purchaser,
8 insurer, or guarantor of mortgage loans, to make, purchase, insure, or
9 guarantee mortgage loans for the lots; or

10 (f) Satisfies the requirements of any local, state, or federal
11 governmental agency.

12 The amendment shall not adversely affect the title to any lot
13 unless the owner of the affected lot consents to the amendment in
14 writing.

15 (3) The declaration may require all or a specified number or
16 percentage of the eligible mortgagees who hold first lien security
17 interests encumbering lots to approve specified actions of the owners
18 or association as a condition to the effectiveness of those actions,
19 but a requirement for approval may not operate to:

20 (a) Deny or delegate control of the general administrative affairs
21 of the association by the owners or board of directors;

22 (b) Prevent the association or board of directors from commencing,
23 intervening in, or settling any litigation or proceeding; or

24 (c) Prevent any insurance trustee or the association from receiving
25 and distributing any insurance proceeds.

26 For purposes of this subsection, "eligible mortgagee" means the
27 holder of a mortgage on a lot that has filed with the secretary of the
28 association a written request for copies of notices of any action by
29 the association that requires the consent of mortgagees that includes
30 the lot number and address of the property subject to the mortgage. If
31 an eligible mortgagee fails to respond to a request for approval within
32 thirty days following the association's issuance of a notice requesting
33 such approval, the eligible mortgagee's approval is deemed granted.

34 (4) The declaration may permit the association's members to approve
35 an amendment through a combination of votes conducted during meetings
36 and through a written consent process.

37 (5) The declaration may require that to be effective all
38 declaration amendments must be signed by one or more officers of the

1 association, or if applicable, by the declarant. To be effective, all
2 declaration amendments must be acknowledged and recorded in each county
3 in which any portion of the property is located.

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

6 (1) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Requestor" means the party requesting mediation.

9 (b) "Request" means a request for mediation.

10 (c) "Recipient" means the party that receives the request for
11 mediation.

12 (2) For any dispute that arises after the effective date of this
13 section and is not a subject of any judicial or other legal proceedings
14 pending before the effective date of this section:

15 (a) With the exception of the claims listed in (b) of this
16 subsection, a dispute between owners or between owners and their
17 association that involve the governing documents must be submitted to
18 mediation before any party may pursue the claim through court
19 proceedings.

20 (b) The following categories of claims are exempt from the
21 prelitigation mediation requirement under (a) of this subsection:

22 (i) Claims in which the statute of limitations will soon expire,
23 except that any party to the lawsuit may file a motion with the court
24 requesting that the judge order the parties to mediate before allowing
25 them to proceed with the lawsuit and temporarily stay the litigation
26 proceedings pending the outcome of mediation;

27 (ii) Claims for injunctive relief, except that any party to the
28 lawsuit may file a motion with the court requesting that the judge
29 order the parties to mediate before allowing them to proceed with the
30 lawsuit and temporarily stay the litigation proceedings pending the
31 outcome of mediation;

32 (iii) Claims for declaratory judgment;

33 (iv) Claims related to assessments, or the collection of
34 assessments, or to foreclosures;

35 (v) Claims for defects in construction of homes and other
36 improvements, whether individually owned or part of the common areas;

1 (vi) Claims that involve parties who are not subject to the
2 association's governing documents;

3 (vii) Claims between members of the association that are unrelated
4 to the association's governing documents;

5 (viii) Claims or issues that have been the subject of a previous
6 mediation request, response, or mediation conference under this section
7 within twelve months before the date of the most recent request,
8 response, or mediation conference, whichever is sooner.

9 (c) Unless another reasonable alternative dispute resolution
10 process is set forth in the declaration or adopted by a majority vote
11 of the nondeclarant members of the association, the following
12 procedures in this subsection govern the mediation of disputes under
13 this chapter:

14 (i) The party requesting mediation must submit a request for
15 mediation to the other parties;

16 (ii) The request may be made in any medium, provided that the
17 requestor can prove the request was received by the recipient;

18 (iii) Mediation must be conducted by one mediator, unless all
19 parties to the mediation agree otherwise;

20 (iv) Unless all parties to the mediation agree otherwise, the
21 mediation conference must be held within ninety days of the date the
22 request is received by all recipients;

23 (v) The request for mediation must: State the issues that the
24 requestor wishes to mediate; certify that the requestor is willing to
25 meet in good faith; and propose a mediator and provide full contact
26 information (name, address, telephone and fax numbers, and e-mail
27 address) for the proposed mediator;

28 (vi) The recipients must respond to the requestor no later than
29 thirty days after the request is received by all recipients. The
30 response may be made in any medium as long as the recipient can prove
31 that the response was received by the requestor;

32 (vii) If the recipient agrees to mediate, the response must include
33 a statement of any additional issues that the recipient wishes to
34 mediate, a statement of whether the mediator proposed by the requestor
35 is acceptable to the recipient and, if not, a proposed alternative
36 mediator and that mediator's contact information. If the recipient
37 declines to mediate, the response must indicate this decision and

1 include a statement of the reasons that the recipient declines to
2 mediate;

3 (viii) The requestor must reply to the recipient's response within
4 fifteen days of receipt. If the response identifies additional issues
5 that the recipient wishes to address at mediation, the reply must state
6 whether the requestor agrees to mediate those issues. If the requestor
7 does not agree to mediate those issues, the reply must indicate this
8 decision and include a statement of the reasons that the requestor
9 declines to mediate the issues identified by the recipient. A
10 requestor's refusal to mediate the issues identified in the reply is
11 subject to (e) of this subsection;

12 (ix) If the recipient has proposed an alternative mediator, the
13 reply must state whether the alternative mediator is acceptable to the
14 requestor. If the alternative mediator is not acceptable, the
15 requestor must contact the two proposed mediators within fifteen days
16 of delivering the reply and request that the mediators choose a third
17 person who is available within the time frame required in this section
18 to act as mediator;

19 (x) The mediator must be an attorney or judge. The mediator's
20 primary function is to assist the parties in communicating with one
21 another and to find ways to resolve the disputed issues by agreement.

22 (d) Either the recipient or the requestor can decline mediation.
23 If mediation is declined, or a party fails to participate in a
24 scheduled mediation conference, the other party may proceed with filing
25 a legal action. In such a case, the court may:

26 (i) Enter an order compelling the parties to participate in a
27 mediation conference if the court determines that mediation would be
28 productive or useful; and

29 (ii) Impose appropriate remedies for a party's unjustified failure
30 to mediate claims subject to mandatory mediation requirements imposed
31 under this section including, without limitation, requiring that party
32 to pay all mediation fees and costs charged by the mediator, reimburse
33 the plaintiff for the costs of filing suit, reimburse the plaintiff for
34 service of process costs, and reimburse the plaintiff for some or all
35 of the plaintiffs' attorneys' fees and costs.

36 This subsection (2)(d) supersedes any inconsistent provisions in an
37 association's governing documents. The standard of review of a trial
38 court's decision under this section is abuse of discretion.

1 (e) Unless the parties agree otherwise, the fees and costs of
2 mediation must be shared equally by all parties to the mediation. For
3 purposes of this subsection (2)(e), "fees and costs of mediation" means
4 only those fees and costs charged by the mediator or mediation service
5 and does not include investigation costs or fees paid to an attorney to
6 represent a party to the mediation. If the mediator requires
7 prepayment of all or a portion of the anticipated fees and costs, all
8 parties to the mediation must comply with this requirement. An
9 association may not condition mediation on a member's payment of any
10 charges, costs, or fees.

11 (3) This section does not limit any party's right to seek relief in
12 a court of competent jurisdiction after the mediation requirements in
13 this section have been met.

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

16 Unless the governing documents permit or require other methods for
17 providing notice, all notices required under this chapter or the
18 governing documents must be delivered or sent by first-class mail
19 postage prepaid to the mailing address of each owner, but not for a
20 shorter time period for providing notice than is required under RCW
21 64.38.035.

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

24 (1) Except as provided under subsection (2) of this section, in a
25 transaction for the sale of a lot that is subject to this chapter, the
26 seller shall furnish to a buyer a homeowners' association information
27 pamphlet that is identical, in form and substance, to the following:

28 "FREQUENTLY ASKED QUESTIONS
29 ABOUT HOMEOWNERS' ASSOCIATIONS

30 Buying a home is a big investment. Homeownership frequently
31 includes automatic membership in a homeowners' association (HOA).
32 There are rights and obligations that come with being a member of an
33 HOA. The information below attempts to give you a basic understanding
34 of what membership in an HOA may involve. To better understand what

1 membership in a particular HOA might involve, you should review that
2 HOA's governing documents and consider seeking the assistance of legal
3 counsel to answer any questions you may have.

4 (1) WHAT IS AN HOA?

5 Washington law defines an HOA as a legal entity in which each
6 member is an owner of residential property that is subject to
7 the HOA's jurisdiction as a result of certain recorded
8 governing documents. The law governing homeowners'
9 associations, chapter 64.38 RCW, provides more information in
10 this regard.

11 (2) WHAT ARE THE GOVERNING DOCUMENTS OF AN HOA?

12 The principal governing document of an HOA is often known as
13 the Declaration of Covenants, Conditions, and Restrictions and
14 Easements (CCRs). Other important HOA documents may include
15 Articles of Incorporation, Bylaws, Rules, and Policies.

16 (3) WHAT SERVICES AND AMENITIES ARE PROVIDED BY HOAs?

17 The services and amenities provided by HOAs vary greatly from
18 community to community. These may include common areas such as
19 a swimming pool, tennis court, playground, trails, community
20 center, or even a golf course. Some HOAs provide landscaping
21 services for homeowners, and some even paint and maintain the
22 exterior of homes.

23 (4) WHAT OBLIGATIONS DOES AN HOA HAVE?

24 Each HOA is different, but the most common HOA roles include
25 maintaining common areas and amenities, administering and
26 enforcing use and architectural restrictions, adopting budgets,
27 and collecting assessments.

28 (5) AM I REQUIRED TO BE A MEMBER OF THE HOA?

29 Generally, the governing documents for an HOA make membership
30 mandatory for all owners within the community. The HOA's
31 governing documents are essentially a legally binding contract
32 between the owner/members and the association. If you have
33 questions about your legal rights and obligations as a member
34 of the HOA, you should consult an attorney.

1 (6) HOW DOES MEMBERSHIP IN AN HOA AFFECT THE OWNERSHIP OF MY
2 HOME?

3 By virtue of your membership in an HOA, you will have various
4 rights and obligations as described in the governing documents.
5 These may include restrictions on the use of your property,
6 architectural controls on future improvements of your property,
7 and the obligation to pay assessments, also known as dues, to
8 the HOA.

9 (7) WHO IS IN CHARGE OF AN HOA?

10 HOAs are typically governed by a board of directors or board of
11 trustees elected by the homeowners. The board's
12 responsibilities and power depend upon the HOA's governing
13 documents.

14 (8) HOW DOES THE HOA ENFORCE THE GOVERNING DOCUMENTS?

15 The governing documents of an HOA typically give it
16 wide-ranging powers to enforce its covenants, rules, and
17 policies. This may include the power to file a lawsuit for
18 damages or injunctive relief or fine an owner who does not
19 comply with the restrictions.

20 (9) WHAT HAPPENS IF I DO NOT PAY MY HOA ASSESSMENTS?

21 The governing documents likely give your HOA the power to place
22 a lien on your home or take other legal action if you fail to
23 pay properly levied assessments. If you do not pay your
24 assessments on time, this might result in the foreclosure of
25 your home by the HOA.

26 (10) WHAT IS THE DIFFERENCE BETWEEN AN HOA AND A CONDOMINIUM
27 ASSOCIATION?

28 A condominium association is a specialized type of homeowners'
29 association. A condominium association is created under
30 different statutes than those that apply to HOAs. Unless your
31 governing documents state that your community is a condominium
32 created pursuant to the Washington Condominium Act, chapter
33 64.34 RCW, or the Horizontal Property Regimes Act, chapter
34 64.32 RCW, it is not a condominium.

1 (11) WHAT HAPPENS IF ONE OF THE COMMON AREAS OF MY HOA MUST BE
2 REPAIRED OR REPLACED?

3 Well-managed HOAs will normally include an amount for reserves
4 in their annual budgets. In this way, a portion of the
5 assessments you pay is set aside and builds up over time to pay
6 for expensive repairs or replacements. You should review the
7 HOA's financial statements to determine if this is true for
8 your HOA.

9 (12) WHAT IS THE AMOUNT OF THE ASSESSMENTS THAT CAN BE CHARGED
10 BY MY HOA?

11 This information should be provided to you as part of the HOA's
12 annual budget process. If you have questions, you should
13 consult the HOA's manager or a member of its board of
14 directors.

15 (13) CAN ASSESSMENTS BE INCREASED?

16 Typically, the governing documents allow for assessments to be
17 adjusted based on the HOA's annual budget. The law governing
18 homeowners' associations requires that an HOA's annual budget
19 be ratified by its members. This is a good opportunity to ask
20 questions as to how budget changes will affect your
21 assessments.

22 (14) CAN MY HOA RESTRICT THE TYPES OF IMPROVEMENTS I CAN MAKE
23 TO MY HOME?

24 Depending on your governing documents, your HOA may have
25 certain architectural or design guidelines and restrictions.
26 If it does, there may be restrictions on the exterior
27 appearance of your home, and you may be required to submit
28 plans and specifications for approval before you make any
29 changes to the exterior or build any additions or other
30 structures.

31 (15) WHAT TYPES OF USE RULES MIGHT AFFECT MY HOME?

32 The HOA's governing documents may contain rules relating to
33 trees, landscaping, pets, satellite dishes, clotheslines,

1 fences, parking, home businesses, rental of homes, and other
2 issues. You should carefully read the governing documents to
3 understand the nature of these restrictions.

4 (16) AS A MEMBER OF AN HOA, CAN I RENT MY HOME?

5 The answer to this question depends on the governing documents
6 for the particular community. Some governing documents
7 prohibit all rentals, some limit the number of homes that can
8 be rented at any time, while others have no restrictions on
9 leasing.

10 (17) WHEN DOES MY HOA MEET?

11 In Washington state, HOAs must hold a meeting of the membership
12 at least once each year. Notice of the date and time of the
13 meeting must be provided to you by the officers of the
14 association. Your HOA's board will likely meet more often. If
15 you would like information concerning the board's meeting
16 schedule, you should consult the HOA's manager or a member of
17 the board.

18 (18) CAN I ATTEND THE REGULAR MEETINGS OF MY HOA'S BOARD OF
19 DIRECTORS?

20 Board meetings are generally open to members of the HOA to
21 observe, but not to participate in. The law governing
22 homeowners' associations permits a board to consider certain
23 sensitive topics in private (executive session), and to exclude
24 HOA members from that part of the board's meeting. Review the
25 HOA's governing documents, particularly its bylaws, to
26 determine your rights.

27 (19) AS A MEMBER OF AN ASSOCIATION, CAN I OBTAIN COPIES OF THE
28 HOA'S RECORDS?

29 The law governing homeowners' associations provides that the
30 records of the HOA must be made available for review by owners
31 during normal business hours at the office of the HOA or its
32 managing agent.

33 (20) HOW CAN I DETERMINE WHETHER THE HOA OF WHICH I AM

1 CONSIDERING BECOMING A MEMBER FACES ANY SERIOUS FINANCIAL
2 PROBLEMS?

3 You should ask the seller questions to get a clear picture of
4 the HOA's financial condition.

5 (21) DO THE BENEFITS OF BELONGING TO AN HOA OUTWEIGH THE
6 BURDENS?

7 This is a question you should consider when the home you want
8 to buy is part of an HOA. Some of the typical benefits and
9 burdens are described above. Studying the governing documents
10 for the community in which you are considering purchasing a
11 home is an important step. Consider exploring this question
12 with your seller, real estate professional, attorney, and other
13 advisors. You may also wish to speak with neighboring
14 homeowners about the community and the HOA."

15 (2) The homeowners' association information pamphlet is not
16 required in real property transfers that occur between commercial
17 buyers and sellers or those transfers listed in RCW 64.06.010.

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

20 (1) Subject to subsection (2) of this section, the declaration may
21 provide for a period of declarant control of the association, during
22 which period a declarant or persons designated by the declarant may (a)
23 appoint and remove the officers and members of the board of directors
24 or (b) veto or approve a proposed action of the board or association.
25 A declarant's failure to veto or approve the proposed action in writing
26 within thirty days of written notice of the proposed action is deemed
27 an approval of the proposed action by the declarant.

28 (2) Regardless of any period provided in the declaration, a period
29 of declarant control terminates no later than the earliest of: (a)
30 Sixty days after conveyance of seventy-five percent of the lots that
31 may be created to lot owners other than a declarant; (b) two years
32 after the last conveyance or transfer of record of a lot except as
33 security for a debt; (c) two years after any development right to add
34 new lots was last exercised; or (d) the date on which the declarant
35 records an amendment to the declaration, pursuant to which the
36 declarant voluntarily surrenders the right to further appoint and

1 remove officers and members of the board of directors. A declarant may
2 voluntarily surrender the right to appoint and remove officers and
3 members of the board of directors before termination of the period of
4 declarant control, but in that event the declarant may require, for the
5 duration of the period of declarant control, that specified actions of
6 the association or board of directors, as described in a recorded
7 instrument executed by the declarant, be approved by the declarant
8 before they become effective.

9 (3) No later than sixty days after conveyance of twenty-five
10 percent of the lots that may be created to lot owners other than a
11 declarant, at least one member and at least twenty-five percent of the
12 members of the board of directors must be elected by lot owners other
13 than the declarant. No later than sixty days after conveyance of fifty
14 percent of the lots that may be created to lot owners other than a
15 declarant, at least thirty-three and one-third percent of the members
16 of the board of directors must be elected by lot owners other than the
17 declarant.

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

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

23 NEW SECTION. Sec. 16. A new section is added to chapter 64.38 RCW
24 to read as follows:

25 (1) For the purposes of this section, "land use approval
26 organization" means any legal entity that asserts itself as a successor
27 or assignee of the declarant or grantor, whether or not the entity
28 meets the definition of an association under this chapter, and asserts
29 the authority to:

30 (a) Enforce covenants;

31 (b) Approve construction of structures on residential real
32 property;

33 (c) Regulate the use of such residential real property; or

34 (d) Grant or deny variances from any requirements pertaining to
35 such residential real property.

1 (2) A land use approval organization may not exercise any authority
2 over residential real property within its asserted jurisdiction unless
3 it or its controlling association complies with the duties and
4 standards, including those for owner membership, meetings, and
5 elections, required of an association under this chapter.

6 (3) All members of a land use approval organization shall exercise
7 good faith in the performance and enforcement of contracts and duties,
8 and in all other transactions involving the owners or occupants of real
9 property located within its asserted jurisdiction. For purposes of
10 this section, "good faith" means honesty in fact and the observance of
11 reasonable standards of fair dealing.

12 **Sec. 17.** RCW 64.06.020 and 2007 c 107 s 4 are each amended to read
13 as follows:

14 (1) In a transaction for the sale of improved residential real
15 property, the seller shall, unless the buyer has expressly waived the
16 right to receive the disclosure statement under RCW 64.06.010, or
17 unless the transfer is otherwise exempt under RCW 64.06.010, deliver to
18 the buyer a completed seller disclosure statement in the following
19 format and that contains, at a minimum, the following information:

20 INSTRUCTIONS TO THE SELLER

21 Please complete the following form. Do not leave any spaces blank. If
22 the question clearly does not apply to the property write "NA." If the
23 answer is "yes" to any * items, please explain on attached sheets.
24 Please refer to the line number(s) of the question(s) when you provide
25 your explanation(s). For your protection you must date and sign each
26 page of this disclosure statement and each attachment. Delivery of the
27 disclosure statement must occur not later than five business days,
28 unless otherwise agreed, after mutual acceptance of a written contract
29 to purchase between a buyer and a seller.

30 NOTICE TO THE BUYER

31 THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE
32 PROPERTY LOCATED AT
33 ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

34 SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR
35 MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE
36 PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT.

1 UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE
2 BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS
3 DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A
4 SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S
5 AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE
6 STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER
7 THE TIME YOU ENTER INTO A SALE AGREEMENT.

8 THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE
9 REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS
10 INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF
11 ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

12 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS
13 PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF
14 QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT
15 LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS,
16 ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER
17 TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE
18 BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS
19 OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT
20 BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR
21 WARRANTIES.

22 Seller is/ is not occupying the property.

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I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Do you have legal authority to sell the property? If no, please explain. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any encroachments, boundary agreements, or boundary disputes? |

1 Yes No Don't know *D. Is there a private road or easement
2 agreement for access to the property?
3 Yes No Don't know *E. Are there any rights-of-way,
4 easements, or access limitations that
5 may affect the Buyer's use of the
6 property?
7 Yes No Don't know *F. Are there any written agreements
8 for joint maintenance of an easement or
9 right-of-way?
10 Yes No Don't know *G. Is there any study, survey project,
11 or notice that would adversely affect the
12 property?
13 Yes No Don't know *H. Are there any pending or existing
14 assessments against the property?
15 Yes No Don't know *I. Are there any zoning violations,
16 nonconforming uses, or any unusual
17 restrictions on the property that would
18 affect future construction or
19 remodeling?
20 Yes No Don't know *J. Is there a boundary survey for the
21 property?
22 Yes No Don't know *K. Are there any covenants,
23 conditions, or restrictions which affect
24 the property?

25 **2. WATER**

26 A. Household Water

(1) The source of water for the
27 property is:
28 Private or publicly owned water
29 system
30 Private well serving only the
31 subject property
32 * Other water system

34 Yes No Don't know *If shared, are there any written
35 agreements?
36 Yes No Don't know *(2) Is there an easement (recorded
37 or unrecorded) for access to and/or
38 maintenance of the water source?
39 Yes No Don't know *(3) Are there any known problems
40 or repairs needed?
41 Yes No Don't know (4) During your ownership, has the
42 source provided an adequate
43 year-round supply of potable
44 water? If no, please explain.
45 Yes No Don't know *(5) Are there any water treatment
46 systems for the property? If yes,
47 are they Leased Owned

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A. The property is served by:
 Public sewer system,
 On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
 Other disposal system, please describe:
.....

Yes No Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.
.....

Yes No Don't know

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

Yes No Don't know

*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped:
.....

Yes No Don't know

*(3) Are there any defects in the operation of the on-site sewage system?

Don't know

(4) When was it last inspected?
.....

By whom:

Don't know

(5) For how many bedrooms was the on-site sewage system approved?
..... bedrooms

Yes No Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know

*F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.
.....

1 Yes No Don't know H. Does the on-site sewage system
2 require monitoring and maintenance
3 services more frequently than once a
4 year? If yes, please explain.
5

6 NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE
7 STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH
8 HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO
9 COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM
10 5. SYSTEMS AND FIXTURES

11 **4. STRUCTURAL**

12 Yes No Don't know *A. Has the roof leaked?
13 Yes No Don't know *B. Has the basement flooded or
14 leaked?
15 Yes No Don't know *C. Have there been any conversions,
16 additions, or remodeling?
17 Yes No Don't know *(1) If yes, were all building
18 permits obtained?
19 Yes No Don't know *(2) If yes, were all final
20 inspections obtained?
21 Yes No Don't know D. Do you know the age of the house?
22 If yes, year of original construction:
23

24 Yes No Don't know *E. Has there been any settling,
25 slippage, or sliding of the property or its
26 improvements?
27 Yes No Don't know *F. Are there any defects with the
28 following: (If yes, please check
29 applicable items and explain.)

<input type="checkbox"/> Foundations	<input type="checkbox"/> Decks	<input type="checkbox"/> Exterior Walls
<input type="checkbox"/> Chimneys	<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Fire Alarm
<input type="checkbox"/> Doors	<input type="checkbox"/> Windows	<input type="checkbox"/> Patio
<input type="checkbox"/> Ceilings	<input type="checkbox"/> Slab Floors	<input type="checkbox"/> Driveways
<input type="checkbox"/> Pools	<input type="checkbox"/> Hot Tub	<input type="checkbox"/> Sauna
<input type="checkbox"/> Sidewalks	<input type="checkbox"/> Outbuildings	<input type="checkbox"/> Fireplaces
<input type="checkbox"/> Garage Floors	<input type="checkbox"/> Walkways	<input type="checkbox"/> Siding
<input type="checkbox"/> Other	<input type="checkbox"/> Wood Stoves	

38 Yes No Don't know *G. Was a structural pest or "whole
39 house" inspection done? If yes, when
40 and by whom was the inspection
41 completed?

42 Yes No Don't know H. During your ownership, has the
43 property had any wood destroying
44 organism or pest infestation?
45 Yes No Don't know I. Is the attic insulated?
46 Yes No Don't know J. Is the basement insulated?

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5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Electrical system, including wiring, switches, outlets, and service |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Plumbing system, including pipes, faucets, fixtures, and toilets |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Hot water tank |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Garbage disposal |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Appliances |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Sump pump |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Heating and cooling systems |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Security system
<input type="checkbox"/> Owned <input type="checkbox"/> Leased |
| | | | Other |

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|-----------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Security system |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Tanks (type): |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | Satellite dish |
| | | | Other: |

6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Is there a Homeowners' Association? <u>If yes, provide the name of the association and contact information for the association:</u>
.....
.....
..... |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | B. Are there regular periodic assessments:
\$. . . per <input type="checkbox"/> Month <input type="checkbox"/> Year
<input type="checkbox"/> Other |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any pending special assessments? |

- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.
DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

NEW SECTION. **Sec. 18.** (1) The department of community, trade, and economic development shall create a task force of up to thirteen members to provide recommendations on model declarations and a method for distributing information on homeowners' associations to prospective buyers. The task force shall draft one or more model declarations for use by declarants forming homeowners' associations. In developing the

1 model declarations, the task force shall review declarations creating
2 homeowners' associations that are currently used in Washington state
3 and other states. The task force shall also draft proposed legislation
4 that provides an effective method for distributing information about a
5 lot's homeowners' association to that lot's prospective buyer. In
6 developing the proposed legislation, the task force shall review the
7 methods used in Washington state and other states.

8 (2) The task force membership shall include:

9 (a) Two board members representing two different homeowners'
10 associations;

11 (b) Three homeowners who own a home that is their primary residence
12 in a community or cooperative that is governed by chapter 64.38 RCW;

13 (c) Two attorneys with expertise in homeowners' association
14 formation;

15 (d) A representative from the department of community, trade, and
16 economic development; and

17 (e) A representative of city governments.

18 The speaker of the house of representatives and the majority leader
19 of the senate may each appoint one representative and one senator from
20 each of the two largest caucuses to serve on the task force on an ex
21 officio basis.

22 (3) The task force shall convene as soon as possible upon the
23 appointment of its members. The task force shall elect a chair and
24 adopt rules for conducting the business of the task force.
25 Administrative and clerical support shall be provided by the department
26 of community, trade, and economic development.

27 (4) Legislative members of the task force must be reimbursed for
28 travel expenses in accordance with RCW 44.04.120.

29 (5) By December 10, 2008, the task force shall provide a report of
30 recommended model declarations and proposed legislation to the
31 legislature and the governor.

32 (6) This section expires December 31, 2008.

33 NEW SECTION. **Sec. 19.** The code reviser shall alphabetize and
34 renumber the definitions in RCW 64.38.010.

35 NEW SECTION. **Sec. 20.** If specific funding for the purposes of
36 section 18 of this act, referencing section 18 of this act by bill or

1 chapter number and section number, is not provided by June 30, 2008, in
2 the omnibus appropriations act, section 18 of this act is null and
3 void."

4 Correct the title.

--- END ---