

SB 6745 - S AMD 83

By Senators Fraser, Haugen, and Weinstein

ADOPTED AS AMENDED 02/18/2008

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 **Sec. 4.** RCW 64.38.015 and 1995 c 283 s 3 are each amended to read
2 as follows:

3 The membership of an association at all times shall consist
4 exclusively of the owners of all real property over which the
5 association has jurisdiction, both developed and undeveloped or, in the
6 case of a cooperative, the members of the association who by virtue of
7 their ownership interest in the association have exclusive possession
8 of a lot.

9 **Sec. 5.** RCW 64.38.020 and 1995 c 283 s 4 are each amended to read
10 as follows:

11 Unless otherwise provided in the ~~((governing documents))~~
12 declaration, an association may:

13 (1) Adopt and amend bylaws, resolutions, policies, rules, and
14 regulations that are not inconsistent with the declaration or with this
15 chapter;

16 (2) Adopt and amend budgets for revenues, expenditures, and
17 reserves, and impose and collect assessments for common expenses from
18 owners;

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

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

26 (5) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

19 ~~((13))~~ (15) Exercise all other powers that may be exercised in
20 this state by the same type of ~~((corporation))~~ legal entity as the
21 association, provided those powers do not conflict with any duties
22 imposed on an association in this chapter; and

23 ~~((14))~~ (16) Exercise any other powers necessary and proper for
24 the governance and operation of the association.

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

27 (1) This section establishes voluntary procedures for the
28 enforcement of governing documents.

29 (2) A homeowners' association is deemed to have provided notice and
30 an opportunity to be heard as required under RCW 64.38.020(13) if the
31 association fulfills the following requirements:

32 (a) The association must provide the owner with a notice of the
33 violation that contains:

34 (i) A reference to the rule or rules that the owner allegedly
35 violated;

36 (ii) A short statement of the evidence of the rule violation;

1 (iii) The name of a person with firsthand knowledge of the facts
2 that support the determination that the violation occurred;

3 (iv) A short statement of the action that the association intends
4 to take, including the amount of any fine, subject to the owner's right
5 to request a hearing;

6 (v) A statement that if the owner wishes to contest or explain the
7 violation, he or she must submit a written request for a hearing to the
8 association within fifteen days of delivery of the notice of violation;

9 (vi) A statement of the owner's rights to a hearing, to attend the
10 hearing, to be represented by counsel, and to review the evidence
11 supporting the alleged violation;

12 (b) Upon the timely request for a hearing from an owner, the
13 association must set a hearing date no less than thirty and no more
14 than sixty days from the association's receipt of the request. The
15 association must notify the owner of the hearing at least twenty days
16 before the hearing and must include with the notification a copy of the
17 association's rules of procedure for conducting a hearing;

18 (c) Upon a timely request by the owner who requested a hearing, the
19 association must, at least ten days before the date of the hearing,
20 either provide the owner with a copy of all its evidence concerning the
21 alleged violation, including copies of the complaint signed by a
22 witness with firsthand knowledge of the facts that support the
23 determination that the violation occurred, or identify a reasonable
24 time and place at which the owner may inspect such evidence;

25 (d) The association must permit the owner to be represented by
26 counsel at the hearing; and

27 (e) The association must provide the owner with a written decision,
28 including a statement of the reasons for the decision, within thirty
29 days after the hearing.

30 (3) The chair of the hearing may adjourn or continue the hearing,
31 if necessary, to gather additional information that the association
32 needs in order to make a decision.

33 (4) If an owner does not request a hearing within fifteen days of
34 the association's delivery of the notice of violation, the association
35 may take the remedial action stated in the notice, including the
36 imposition of any fine listed in the notice.

1 **Sec. 7.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read
2 as follows:

3 (1) Except as provided in the association's governing documents or
4 this chapter, the board of directors shall act in all instances on
5 behalf of the association. In the performance of their duties, the
6 officers of the association and members of the board of directors shall
7 exercise the degree of care and loyalty required of an officer or
8 director of a corporation organized under chapter 24.03 RCW.

9 (2) The board of directors shall not act on behalf of the
10 association to amend the articles of incorporation, to take any action
11 that requires the vote or approval of the owners, to terminate the
12 association, to elect members of the board of directors, or to
13 determine the qualifications, powers, and duties, or terms of office of
14 members of the board of directors; but the board of directors may fill
15 vacancies in its membership of the unexpired portion of any term.

16 ~~((3) Within thirty days after adoption by the board of directors
17 of any proposed regular or special budget of the association, the board
18 shall set a date for a meeting of the owners to consider ratification
19 of the budget not less than fourteen nor more than sixty days after
20 mailing of the summary. Unless at that meeting the owners of a
21 majority of the votes in the association are allocated or any larger
22 percentage specified in the governing documents reject the budget, in
23 person or by proxy, the budget is ratified, whether or not a quorum is
24 present. In the event the proposed budget is rejected or the required
25 notice is not given, the periodic budget last ratified by the owners
26 shall be continued until such time as the owners ratify a subsequent
27 budget proposed by the board of directors.~~

28 ~~(4) The owners by a majority vote of the voting power in the
29 association present, in person or by proxy, and entitled to vote at any
30 meeting of the owners at which a quorum is present, may remove any
31 member of the board of directors with or without cause.))~~

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

34 A board of directors may by majority vote incorporate an
35 unincorporated homeowners' association as a nonprofit corporation.

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

3 Notwithstanding any inconsistent provision in the governing
4 documents or other applicable statutes, any member of the board of
5 directors may be removed with or without cause by a majority vote of
6 the owners (1) entitled to elect the board member and present, in
7 person or by proxy, and (2) entitled to vote at any regular or special
8 meeting of the owners at which a quorum is present.

9 **Sec. 10.** RCW 64.38.030 and 1995 c 283 s 6 are each amended to read
10 as follows:

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

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

17 (2) Election by the board of directors of the officers of the
18 association as the bylaws specify;

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

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

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

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

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

29 (1) The association must provide the homeowner with the documents
30 and records reasonably requested by the homeowner to furnish a buyer
31 with the resale certificate required in this section.

32 (2) Unless waived in writing by the buyer and except as provided
33 under subsection (5) of this section, in a transaction for the sale of
34 a lot that is subject to this chapter, the seller shall furnish to the
35 buyer a resale certificate signed by an officer or authorized agent of

1 the association and based on the books and records of the association
2 and the actual knowledge of the person signing the certificate
3 containing:

4 (a) A statement setting forth the amount of the annual assessment
5 due from the seller, any unpaid assessment currently due and payable
6 from the seller, and a statement of any special assessments that have
7 been levied against the lot and have not been paid even though they are
8 not yet due;

9 (b) A statement, which must be current to within forty-five days,
10 of whether the sum of assessments that are delinquent under the
11 association's reasonable delinquency policy exceeds ten percent of the
12 association's budgeted annual expenditures and, if so, the total number
13 of lots that are delinquent under the delinquency policy;

14 (c) A statement, which must be current to within forty-five days,
15 of whether any obligation or liability of the association in excess of
16 the lesser of ten thousand dollars or five percent of the association's
17 budgeted annual expenditures that is sixty days or more past due and,
18 if so, the circumstances that account for this delinquency;

19 (d) A statement of any anticipated repair or replacement costs
20 approved by the board of directors that exceed five percent of the
21 association's current budgeted annual expenditures;

22 (e) A statement of the amount of any reserves for repair or
23 replacement and of any portions of those reserves currently designated
24 by the association for any specified projects;

25 (f) The annual financial statement of the association, including
26 the audit report if it has been prepared, for the year immediately
27 preceding the current year;

28 (g) A balance sheet and a revenue and expense statement of the
29 association, which must be current to within one hundred twenty days;

30 (h) The current adopted budget of the association;

31 (i) A statement of any unsatisfied judgments against the
32 association and the status of any pending suits or legal proceedings in
33 which the association is a plaintiff or defendant;

34 (j) A statement describing any insurance coverage maintained by the
35 association;

36 (k) A statement as to whether there are any alterations or
37 improvements to the seller's lot that the association has determined
38 violate any provision of the governing documents;

1 (l) A statement of whether the association is under declarant
2 control;

3 (m) A statement as to whether there are any known and currently
4 existing violations of applicable health or building codes with respect
5 to the lot or improvements located on the lot, or any portions of the
6 common areas or improvements of the common areas; and

7 (n) A copy of the governing documents that include the following,
8 if applicable:

9 (i) The plat maps and declaration;

10 (ii) The articles of incorporation;

11 (iii) Bylaws, rules, regulations, and policies, if any, including
12 architectural and construction standards and guidelines;

13 (iv) The association's current fine schedule;

14 (v) A copy of the minutes of the most recent meeting of the members
15 of the association, minutes of the previous six meetings of the board
16 of directors, except that minutes of a board meeting that occurred more
17 than three years before the date of the resale certificate required
18 under this section does not need to be provided; and

19 (vi) Any other information reasonably requested by the seller on
20 behalf of the mortgagees of prospective buyers.

21 The association may charge a fee for photocopying costs not to
22 exceed fifteen cents per page for providing any of the documents
23 required to be disclosed in this subsection. The duty to provide
24 copies of documents that are recorded in the recording office of the
25 county in which the lot is located is satisfied if the association
26 identifies in the resale certificate a link to a web site in which
27 copies of the recorded documents can be obtained. The duty to provide
28 copies of documents that are publicly available on the association's
29 web site is satisfied if the association identifies in the resale
30 certificate a link to its web site. The duty to provide copies of the
31 documents required to be disclosed in this subsection is satisfied if
32 the association provides the documents via compact disc or other
33 electronic storage device or via electronic transmission to an email
34 address that the seller who requests the issuance of a resale
35 certificate shall provide to the association.

36 (3)(a) The association, within ten days after a request by a
37 seller, and subject to the seller's payment of a reasonable fee not to
38 exceed one hundred fifty dollars, shall furnish to the seller a resale

1 certificate signed by an officer or authorized agent of the association
2 and containing the information necessary to enable the seller to comply
3 with this section.

4 (b) The association may charge a seller a nominal fee for updating
5 a resale certificate within six months of the seller's request.

6 (4) The seller shall sign the resale certificate, but the seller is
7 not liable to the buyer for any erroneous information provided by the
8 association and included in the resale certificate unless, and to the
9 extent, the seller had actual knowledge of the erroneous information.

10 (5) The resale certificate is not required in real property
11 transfers that occur between commercial buyers and sellers or those
12 transfers listed in RCW 64.06.010.

13 (6) The resale certificate must be attached to the seller
14 disclosure statement required under RCW 64.06.020 unless the buyer has
15 waived the right to receive a seller disclosure statement as provided
16 under chapter 64.06 RCW.

17 (7) The timing of delivery of the seller's disclosures to the buyer
18 under this section is governed by RCW 64.06.030. A buyer may rescind
19 an agreement for the purchase and sale of a lot in accordance with RCW
20 64.06.030, and the buyer has the rights and remedies provided in RCW
21 64.06.070.

22 (8) The fee set forth in subsection (3)(a) of this section may be
23 adjusted for inflation based on the consumer price index applicable to
24 the geographic area in which the lot is located.

25 (9) An association may require the seller to obtain a signed
26 acknowledgement from the buyer affirming that any disclosed information
27 will not be disclosed to third parties unless such disclosure is
28 related to the decision to purchase the lot.

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

31 (1) Except as provided under subsection (2) of this section, a
32 seller must furnish to a purchaser before the execution of any contract
33 for sale of residential real property in which the lot is subject to
34 this chapter the following notice:

35 "BY PURCHASING THE RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF THIS
36 AGREEMENT, YOU WILL BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT
37 GOVERNS THE COMMUNITY IN WHICH THE PROPERTY IS LOCATED. THE

1 ASSOCIATION MAY MAINTAIN AND REPAIR COMMON AREAS, RESTRICT THE USE OF
2 YOUR PROPERTY, COLLECT DUES, AND APPROVE OR DISAPPROVE BUILDING PLANS.
3 UNLESS YOU WAIVE YOUR RIGHT IN WRITING, YOU ARE ENTITLED TO RECEIVE
4 FROM THE SELLER AS PART OF THE DISCLOSURE STATEMENT REQUIRED UNDER
5 CHAPTER 64.06 RCW A CERTIFICATE SIGNED BY AN OFFICER OR AUTHORIZED
6 AGENT OF THE HOMEOWNERS' ASSOCIATION DISCLOSING CERTAIN FINANCIAL AND
7 OTHER INFORMATION ABOUT THE ASSOCIATION."

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. 13.** 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) To the extent authorized in the declaration, an association's
29 lien rights may include liens to secure payment of fines validly
30 imposed.

31 (3) A lien for unpaid assessments and the personal liability for
32 the payment of assessments is extinguished unless proceedings to
33 enforce the lien or collect the debt are instituted within six years
34 after the amount of the assessments sought to be recovered becomes due.

35 (4) This section applies retroactively to any governing documents
36 in effect on the effective date of this section.

1 (5) This section supersedes any provisions of the governing
2 documents that are inconsistent with this section. All such
3 inconsistent provisions of the governing documents are void and
4 unenforceable.

5 **Sec. 14.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read
6 as follows:

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

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

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

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

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

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

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

1 meeting on such motion, or other action that is reasonably identified.
2 This section does not require the disclosure of information in
3 violation of law or that is otherwise exempt from disclosure. This
4 section supersedes any conflicting provisions in Title 23 or 24 RCW or
5 in the association's governing documents.

6 **Sec. 16.** RCW 64.38.040 and 1995 c 283 s 8 are each amended to read
7 as follows:

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

13 NEW SECTION. **Sec. 17.** A new section is added to chapter 64.38 RCW
14 to read as follows:

15 For declarations that exist before the effective date of this
16 section:

17 (1) If a declaration requires more than seventy-five percent of the
18 votes in the association to approve any amendment to the declaration,
19 the association shall, if so directed by owners holding at least sixty-
20 seven percent of the votes in the association, bring an action in
21 superior court for the county, which any portion of the real property
22 subject to the declaration is located, to reduce the percentage of
23 votes required to amend the declaration. The owners' decision to bring
24 an action may, notwithstanding any provision to the contrary in the
25 declaration, be made by votes cast at a meeting of the association duly
26 called or by written consent, or by both. The action shall be an in
27 rem declaratory judgment action whose title shall be the description of
28 the property subject to the declaration.

29 (2) If the court finds that the percentage of votes set forth in
30 the declaration is an unreasonable burden on the ability of the owners
31 to amend the declaration and of the association to administer the
32 property under its jurisdiction, the court shall enter an order
33 striking the percentage of votes from the declaration and substituting
34 the percentage of votes that the court determines to be appropriate in
35 the circumstances. The court shall not mandate approval of less than

1 sixty-seven percent of the votes in the association to amend any
2 provision of the declaration.

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

5 (1) Except as provided in subsection (2) of this section,
6 declarations recorded after the effective date of this section can be
7 amended with the approval of at least sixty-seven percent of the total
8 votes in the association, or any larger percentage specified in the
9 declaration.

10 (2) A declarant may unilaterally amend the declaration, but only if
11 the right to amend is clearly stated in the declaration and if the
12 amendment:

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

15 (b) Withdraws property from the declaration, if the withdrawal is
16 allowed under the terms of the declaration and if the property to be
17 withdrawn is not owned by any third party;

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

20 (d) Enables any title insurance company to issue title insurance
21 coverage for the lots;

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

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

27 The amendment shall not adversely affect the title to any lot
28 unless the owner of the affected lot consents to it in writing.

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

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

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

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

3 For purposes of this subsection, "eligible mortgagee" means the
4 holder of a mortgage on a lot that has filed with the secretary of the
5 association a written request for copies of notices of any action by
6 the association that requires the consent of mortgagees that includes
7 the lot number and address of the property subject to the mortgage. If
8 an eligible mortgagee fails to respond to a request for approval within
9 thirty days following the association's issuance of a notice requesting
10 such approval, the eligible mortgagee's approval is deemed granted.

11 (4) The declaration may permit the association's members to approve
12 an amendment through a combination of votes conducted during meetings
13 or through a written consent process.

14 (5) The declaration may require that to be effective all
15 declaration amendments must be signed by one or more officers of the
16 association, or if applicable, by the declarant. To be effective, all
17 declaration amendments must be acknowledged and recorded in each county
18 in which any portion of the property is located.

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

21 An action to challenge the validity of a declaration amendment
22 adopted by the association under this chapter and after the effective
23 date of this section may not be brought more than one year after the
24 amendment is recorded.

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

27 (1) This section applies to associations in which the declaration
28 or the bylaws authorize only the board of directors to adopt, amend, or
29 rescind bylaws and to do so without a vote of the members and, with
30 respect to those associations, to all bylaws adopted or amended by the
31 board of directors after the effective date of this section.

32 (2) A bylaw adopted, amended, or rescinded by the board of
33 directors shall not be valid or enforceable until it is ratified by the
34 association's members as set forth in this subsection:

35 (a) The board of directors shall submit all bylaws adopted,
36 amended, or rescinded by the board to a vote of the members. The vote

1 must be held at the next regularly scheduled annual meeting of the
2 association, or at a special meeting held before the next annual
3 meeting.

4 (b) The notice of the annual or special meeting must include the
5 text of any existing bylaw that the board has approved for amendment or
6 rescission, and the text of any new or amended bylaw approved by the
7 board.

8 (c) Unless the governing documents specify a longer advance notice
9 period for a meeting, notice of the meeting, at which the proposed
10 bylaw change will be voted upon, must be provided at least ten days in
11 advance of the meeting and shall not be given more than sixty days in
12 advance of the meeting.

13 (d) The proposed bylaw change is deemed approved and ratified by
14 the members unless a majority of all the votes in the association vote
15 at the meeting, in person or by proxy, to reject the bylaw change
16 approved by the board.

17 (3) All bylaw changes ratified by the members in accordance with
18 this section take effect the day after the annual or special meeting at
19 which they were ratified.

20 NEW SECTION. **Sec. 21.** A new section is added to chapter 64.38 RCW
21 to read as follows:

22 For rules, or amendments to rules, adopted after the effective date
23 of this section:

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

- 26 (a) The rule is in writing;
- 27 (b) The rule is required by law or, within the authority of the
28 board, conferred by law or by the declaration;
- 29 (c) The rule is consistent with the governing documents; and
- 30 (d) The rule is adopted or amended in substantial compliance with
31 the requirements of this chapter.

32 (2) Except for emergency rules, the board of directors must provide
33 the association's members with notice and an opportunity to comment on
34 any proposed new or amended rule before the board is authorized to
35 adopt or enforce that rule. For purposes of this section, an
36 "emergency rule" is a rule that is necessary for the immediate
37 preservation of health and safety or a rule that sets forth specific

1 rights or obligations affecting the association or its members under
2 state statutes or administrative rules. Emergency rules become
3 effective immediately, subject to the members' right to request a
4 ratification vote under subsection (3) of this section.

5 (3) Except for emergency rules, rules adopted by the board of
6 directors following notice and an opportunity for comment become
7 effective thirty days after notice of the rules is provided to the
8 members in the manner authorized by the governing documents, unless a
9 written petition signed by twenty percent of the total votes in the
10 association is submitted to the board within that thirty-day period
11 requesting a ratification vote on the proposed rule. If a ratification
12 vote is requested, the association shall use the following process for
13 the ratification vote:

14 (a) The board of directors must submit the rules on which a
15 ratification vote has been requested to a vote of the members. The
16 vote must be conducted at the next regularly scheduled annual meeting
17 of the association, or at a special meeting held before the next annual
18 meeting.

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

21 (c) Unless the governing documents specify a longer advance notice
22 period for an association meeting, notice of the meeting, at which the
23 ratification vote will be conducted, must be provided at least ten days
24 in advance of the meeting and shall not be provided more than sixty
25 days in advance of the meeting.

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

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

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

1 (a) The board shall give notice of a proposed rule change to the
2 owners. The notice must include the following information: (i) The
3 text of the proposed rule change; (ii) a description of the purpose and
4 effect of the proposed rule change; and (iii) the deadline for
5 submission of a comment on the proposed rule change.

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

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

13 (d) The board shall give notice of a rule change to the owners.
14 The notice must set out the text of the rule change and state the date
15 the rule change takes effect. Except for emergency rules, the date the
16 rule change takes effect must not be less than thirty days after notice
17 of the rule change is provided in the manner authorized in the
18 governing documents.

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

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

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

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

25 (c) "Recipient" means the party that receives the request for
26 mediation.

27 (2) For disputes that arise after the effective date of this
28 section and do not apply to any judicial or other legal proceedings
29 pending before the effective date of this section:

30 (a) With the exception of the claims listed in (b) of this
31 subsection, disputes between owners or between owners and their
32 association that involve the governing documents must be submitted to
33 mediation before any party may pursue the claim through court
34 proceedings.

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

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

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

11 (iii) Claims for declaratory judgment;

12 (iv) Claims related to assessments, or the collection of
13 assessments, or to foreclosures;

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

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

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

20 (viii) Claims or issues that have been the subject of a previous
21 mediation request, response, or mediation conference under this section
22 within twelve months of the date of the most recent request, response,
23 or mediation conference, whichever is sooner.

24 (c) Unless another reasonable alternative dispute resolution
25 process is set forth in the declaration or adopted by a majority vote
26 of the nondeclarant members of the association, the following
27 procedures in this subsection govern the mediation of disputes under
28 this chapter:

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

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

33 (iii) Mediation must be conducted by one mediator, unless the
34 parties agree otherwise;

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

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

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

10 (vii) If the recipient agrees to mediate, the response must include
11 a statement of any additional issues that the recipient wishes to
12 mediate, a statement of whether the mediator proposed by the requestor
13 is acceptable to the recipient and, if not, a proposed alternative
14 mediator and that mediator's contact information. If the recipient
15 declines to mediate, the response must indicate this decision and
16 include a statement of the reasons that the recipient declines to
17 mediate;

18 (viii) The requestor must reply to the recipient's response within
19 fifteen days of receipt. If the response identifies additional issues
20 that the recipient wishes to address at mediation, the reply must state
21 whether the requestor agrees to mediate those issues. If the requestor
22 does not agree to mediate those issues, the reply must indicate this
23 decision and include a statement of the reasons that the requestor
24 declines to mediate the issues identified by the recipient. A
25 requestor's refusal to mediate the issues identified in the reply is
26 subject to (e) of this subsection;

27 (ix) If the recipient has proposed an alternative mediator, the
28 reply must state whether the alternative mediator is acceptable to the
29 requestor. If the alternative mediator is not acceptable, the
30 requestor must contact the two proposed mediators within fifteen days
31 of delivering the reply and request that the mediators choose a third
32 person who is available within the time frame required in this section
33 to act as mediator;

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

37 (d) Either the recipient or the requestor can decline mediation.

1 If mediation is declined, or a party fails to participate in a
2 scheduled mediation conference, the other party may proceed with filing
3 a legal action. In such a case, the court may:

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

7 (ii) Impose appropriate remedies for a party's unjustified failure
8 to mediate claims subject to mandatory mediation requirements imposed
9 under this section including, without limitation, requiring that party
10 to pay all mediation fees and costs charged by the mediator, reimburse
11 the plaintiff for the costs of filing suit, reimburse the plaintiff for
12 process of service costs, and reimburse the plaintiff for some or all
13 of the plaintiffs' attorneys' fees and costs.

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

17 (e) Unless the parties agree otherwise, the fees and costs of
18 mediation must be shared equally by all parties to the mediation. For
19 purposes of this subsection (2)(e), "fees and costs of mediation" means
20 only those fees and costs charged by the mediator or mediation service
21 and does not include investigation costs or fees paid to an attorney to
22 represent a party to the mediation. If the mediator requires
23 prepayment of all or a portion of the anticipated fees and costs, all
24 parties to the mediation must comply with this requirement. An
25 association may not condition mediation on a member's payment of any
26 charges, costs, or fees.

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

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

32 Unless the governing documents permit or require other methods for
33 providing notice, all notices required under this chapter or the
34 governing documents must be delivered or sent by first-class mail
35 postage prepaid to the mailing address of each owner, but not for a
36 shorter time period for providing notice than is required under RCW
37 64.38.035.

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

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

7 "FREQUENTLY ASKED QUESTIONS
8 ABOUT HOMEOWNERS' ASSOCIATIONS

9 Buying a home is a big investment. Homeownership frequently
10 includes automatic membership in a homeowners' association (HOA).
11 There are rights and obligations that come with being a member of an
12 HOA. The information below attempts to give you a basic understanding
13 of what membership in an HOA may involve. To better understand what
14 membership in a particular HOA might involve, you should review that
15 HOA's governing documents and consider seeking the assistance of legal
16 counsel to answer any questions you may have.

17 (1) WHAT IS AN HOA?

18 Washington law defines an HOA as a legal entity in which each
19 member is an owner of residential property that is subject to
20 the HOA's jurisdiction as a result of certain recorded
21 governing documents. The law governing homeowners'
22 associations, chapter 64.38 RCW, provides more information in
23 this regard.

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

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

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

30 The services and amenities provided by HOAs vary greatly from
31 community to community. These may include common areas such as
32 a swimming pool, tennis court, playground, trails, community
33 center, or even a golf course. Some HOAs provide landscaping

1 services for homeowners, and some even paint and maintain the
2 exterior of homes.

3 (4) WHAT OBLIGATIONS DOES AN HOA HAVE?

4 Each HOA is different, but the most common HOA roles include
5 maintaining common areas and amenities, administering and
6 enforcing use and architectural restrictions, adopting budgets,
7 and collecting assessments.

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

9 Generally, the governing documents for an HOA make membership
10 mandatory for all owners within the community. The HOA's
11 governing documents are essentially a legally binding contract
12 between the owner/members and the association. If you have
13 questions about your legal rights and obligations as a member
14 of the HOA, you should consult an attorney.

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

17 By virtue of your membership in an HOA, you will have various
18 rights and obligations as described in the governing documents.
19 These may include restrictions on the use of your property,
20 architectural controls on future improvements of your property,
21 and the obligation to pay assessments, also known as dues, to
22 the HOA.

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

24 HOAs are typically governed by a board of directors or board of
25 trustees elected by the homeowners. The board's
26 responsibilities and power depend upon the HOA's governing
27 documents.

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

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

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

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

6 (10) WHAT IS THE DIFFERENCE BETWEEN AN HOA AND A CONDOMINIUM
7 ASSOCIATION?

8 A condominium association is a specialized type of homeowners'
9 association. A condominium association is created under
10 different statutes than those that apply to HOAs. Unless your
11 governing documents state that your community is a condominium
12 created pursuant to the Washington Condominium Act, chapter
13 64.34 RCW, or the Horizontal Property Regimes Act, chapter
14 64.32 RCW, it is not a condominium.

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

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

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

25 If you are a new buyer, you are entitled to a resale
26 certificate that will provide this information. Otherwise,
27 this information should be provided to you as part of the HOA's
28 annual budget process. If you have questions, you should
29 consult the HOA's manager or a member of its board of
30 directors.

31 (13) CAN ASSESSMENTS BE INCREASED?

32 Typically, the governing documents allow for assessments to be
33 adjusted based on the HOA's annual budget. The law governing
34 homeowners' associations requires that an HOA's annual budget

1 be ratified by its members. This is a good opportunity to ask
2 questions as to how budget changes will affect your
3 assessments.

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

6 Depending on your governing documents, your HOA may have
7 certain architectural or design guidelines and restrictions.
8 If it does, there may be restrictions on the exterior
9 appearance of your home, and you may be required to submit
10 plans and specifications for approval before you make any
11 changes to the exterior or build any additions or other
12 structures.

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

14 The HOA's governing documents may contain rules relating to
15 trees, landscaping, pets, satellite dishes, clotheslines,
16 fences, parking, home businesses, rental of homes, and other
17 issues. You should carefully read the governing documents to
18 understand the nature of these restrictions.

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

20 The answer to this question depends on the governing documents
21 for the particular community. Some governing documents
22 prohibit all rentals, some limit the number of homes that can
23 be rented at any time, while others have no restrictions on
24 leasing.

25 (17) WHEN DOES MY HOA MEET?

26 In Washington state, HOAs must hold a meeting of the membership
27 at least once each year. Notice of the date and time of the
28 meeting must be provided to you by the officers of the
29 association. Your HOA's board will likely meet more often. If
30 you would like information concerning the board's meeting
31 schedule, you should consult the HOA's manager or a member of
32 the board.

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

1 Board meetings are generally open to members of the HOA to
2 observe, but not to participate in. The law governing
3 homeowners' associations permits a board to consider certain
4 sensitive topics in private (executive session), and to exclude
5 HOA members from that part of the board's meeting. Review the
6 HOA's governing documents, particularly its bylaws, to
7 determine your rights.

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

10 The law governing homeowners' associations provides that the
11 records of the HOA must be made available for review by owners
12 during normal business hours at the office of the HOA or its
13 managing agent.

14 (20) HOW CAN I DETERMINE WHETHER THE HOA OF WHICH I AM
15 CONSIDERING BECOMING A MEMBER FACES ANY SERIOUS FINANCIAL
16 PROBLEMS?

17 As a purchaser of a home within an HOA, you are entitled to
18 receive a resale certificate that will provide you with
19 information regarding the financial condition of the HOA and
20 whether it is involved in any litigation.

21 However, you should also ask the seller questions to get a
22 clear picture of the HOA's financial condition.

23 (21) DO THE BENEFITS OF BELONGING TO AN HOA OUTWEIGH THE
24 BURDENS?

25 This is a question you should consider when the home you want
26 to buy is part of an HOA. Some of the typical benefits and
27 burdens are described above. Studying the governing documents
28 for the community in which you are considering purchasing a
29 home is an important step. Consider exploring this question
30 with your seller, real estate professional, attorney, and other
31 advisors. You may also wish to speak with neighboring
32 homeowners about the community and the HOA."

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

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

3 (1) Subject to subsection (2) of this section, the declaration may
4 provide for a period of declarant control of the association, during
5 which period a declarant or persons designated by the declarant may (a)
6 appoint and remove the officers and members of the board of directors
7 or (b) veto or approve a proposed action of the board or association.
8 A declarant's failure to veto or approve the proposed action in writing
9 within thirty days of written notice of the proposed action is deemed
10 an approval of the proposed action by the declarant.

11 (2) Regardless of any period provided in the declaration, a period
12 of declarant control terminates no later than the earliest of: (a)
13 Sixty days after conveyance of seventy-five percent of the lots that
14 may be created to lot owners other than a declarant; (b) two years
15 after the last conveyance or transfer of record of a lot except as
16 security for a debt; (c) two years after any development right to add
17 new lots was last exercised; or (d) the date on which the declarant
18 records an amendment to the declaration, pursuant to which the
19 declarant voluntarily surrenders the right to further appoint and
20 remove officers and members of the board of directors. A declarant may
21 voluntarily surrender the right to appoint and remove officers and
22 members of the board of directors before termination of the period of
23 declarant control, but in that event the declarant may require, for the
24 duration of the period of declarant control, that specified actions of
25 the association or board of directors, as described in a recorded
26 instrument executed by the declarant, be approved by the declarant
27 before they become effective.

28 (3) No later than sixty days after conveyance of twenty-five
29 percent of the lots that may be created to lot owners other than a
30 declarant, at least one member and at least twenty-five percent of the
31 members of the board of directors must be elected by lot owners other
32 than the declarant. No later than sixty days after conveyance of fifty
33 percent of the lots that may be created to lot owners other than a
34 declarant, at least thirty-three and one-third percent of the members
35 of the board of directors must be elected by lot owners other than the
36 declarant.

1 NEW SECTION. **Sec. 26.** A new section is added to chapter 64.38 RCW
2 to read as follows:

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

6 NEW SECTION. **Sec. 27.** A new section is added to chapter 64.38 RCW
7 to read as follows:

8 (1) For the purposes of this section, "land use approval
9 organization" means any legal entity, except for the original declarant
10 or grantor, that does not meet the definition of an association under
11 this chapter but asserts the authority to:

12 (a) Approve construction of structures on residential real
13 property;

14 (b) Regulate the use of such residential real property; or

15 (c) Grant or deny variances from any requirements pertaining to
16 such residential real property.

17 (2) A land use approval organization may not exercise any authority
18 over residential real property unless:

19 (a) The membership of the organization is open to the owners of all
20 real property subject to its authority;

21 (b) The membership of the organization elects the organization's
22 board of directors; and

23 (c) The board of directors conducts periodic open membership
24 meetings.

25 (3) The board of directors of a land use approval organization
26 shall exercise the degree of care and loyalty required of an officer or
27 director of a corporation organized under chapter 24.03 RCW.

28 NEW SECTION. **Sec. 28.** The code reviser shall alphabetize and
29 renumber the definitions in RCW 64.38.010."

ADOPTED AS AMENDED 02/18/2008

1 On page 1, line 1 of the title, after "associations;" strike the
2 remainder of the title and insert "amending RCW 64.38.005, 64.38.010,
3 64.38.015, 64.38.020, 64.38.025, 64.38.030, 64.38.035, and 64.38.040;
4 adding new sections to chapter 64.38 RCW; and creating a new section."

EFFECT: Homeowners may reject a budget through majority vote in person, by proxy, or by mail regardless of whether there is a quorum.

Clarifies that while association members may add business to the agenda for a special meeting they called, the board also may put business on the agenda and that the business does not need to be addressed in any particular order.

Permits homeowners' associations to give statutorily required notice by e-mail or other means if they choose to.

The provision regulating declarant (or developer) control of an HOA is revised to be consistent with the condominium act.

HOAs may vote in a manner allowed by their governing documents or by other law that is applicable to their legal entity, such as the nonprofit corporation act. Mail-in voting is permitted.

Addresses organizations that are not technically homeowners' associations, but that assert authority over homeowners by regulating the owner's use of the land. Requires that those organizations be elected by the homeowners subject to their authority, that there be periodic open meetings, and that the board exercise the care and loyalty required of the boards of nonprofit corporations.

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