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SENATE BILL 6215

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State of Washington

60th Legislature

2008 Regular Session

By Senators Tom, Honeyford, and McCaslin

Read first time 01/14/08. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to reserve accounts and studies for condominium  
2 associations; amending RCW 64.34.020, 64.34.304, 64.34.410, and  
3 64.34.425; adding new sections to chapter 64.34 RCW; and creating a new  
4 section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds, declares, and  
7 determines that:

8 (1) Condominium associations are responsible for the maintenance,  
9 repair, and replacement of common elements. The cost of performing  
10 these responsibilities is determined by the development of a budget,  
11 and is funded by owners through association assessments.

12 (2) Major maintenance, repair, and replacement costs are  
13 inevitable. Funding of these costs must come from existing cash  
14 resources, assessments, or loans. There is concern about the ability  
15 of associations and their owners to plan for and fund these costs.

16 (3) It is important that all condominium associations adopt and use  
17 a financial planning and budget process that accurately reflects  
18 projected annual operating costs and long-term capital or major  
19 expenses and that results in a balanced budget.

1 (4) Full and open disclosure to owners and the opportunity for  
2 participation by owners in the development of budgets should be  
3 provided. Full disclosure of the budget and reserves, if any, should  
4 also be made to prospective purchasers.

5 (5) Although condominium associations should be encouraged to fund  
6 and maintain reserves, the law should not mandate how condominium  
7 associations fund and maintain reserves. The method and manner of  
8 funding reserves are best addressed by the members of the condominium  
9 association and its elected board of directors.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.34 RCW  
11 under the subchapter heading "Article 3" to read as follows:

12 (1) An association is encouraged to establish a reserve account to  
13 fund major maintenance, repair, and replacement of common elements,  
14 including limited common elements that will require major maintenance,  
15 repair, or replacement in more than one and fewer than thirty years.  
16 A reserve account shall be established in the name of the association.  
17 The board of directors is responsible for administering the reserve  
18 account.

19 (2) Unless doing so would impose an unreasonable hardship, an  
20 association shall prepare and update a reserve study, in accordance  
21 with the association's governing documents and RCW 64.34.224(1). The  
22 initial reserve study must be based upon a visual site inspection  
23 conducted by a reserve study professional.

24 (3) Unless doing so would impose an unreasonable hardship, the  
25 association shall update the reserve study annually. At least every  
26 three years, an updated reserve study must be prepared and based upon  
27 a visual site inspection conducted by a reserve study professional.

28 (4) This section and sections 3 through 7 of this act apply to  
29 condominiums governed by chapter 64.32 RCW or this chapter and intended  
30 in whole or in part for residential purposes. These sections do not  
31 apply to condominiums consisting solely of units that are restricted in  
32 the declaration to nonresidential use. An association's governing  
33 documents may contain stricter requirements.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.34 RCW  
35 under the subchapter heading "Article 3" to read as follows:

36 (1) A reserve study as described in section 2 of this act is

1 supplemental to the association's operating and maintenance budget. In  
2 preparing a reserve study, the association shall estimate the  
3 anticipated major maintenance, repair, and replacement expenses, whose  
4 infrequent and significant nature make them impractical to be included  
5 in an annual budget.

6 (2) A reserve study shall include:

7 (a) A reserve component list, including quantities and estimates  
8 for useful life of each reserve component, remaining useful life of  
9 each reserve component, and current repair and replacement cost;

10 (b) The date of the study and a statement that the study meets the  
11 requirements of this section;

12 (c) The level of reserve study performed:

13 (i) Level I: Full reserve study funding analysis and plan;

14 (ii) Level II: Update with visual site inspection;

15 (iii) Level III: Update with no visual site inspection;

16 (d) The association's reserve account balance;

17 (e) The percentage of the fully funded balance that the reserve  
18 account is funded;

19 (f) Special assessments already implemented or planned;

20 (g) Interest and inflation assumptions;

21 (h) Current reserve account contribution rate;

22 (i) Recommended reserve account contribution rate;

23 (j) Projected reserve account balance for a minimum of twenty years  
24 and a funding plan to pay for projected expenses from those reserves  
25 without reliance on future unplanned special assessments; and

26 (k) Whether the reserve study was prepared with the assistance of  
27 a reserve study professional.

28 (3) A reserve study shall include the following disclosure:

29 "This reserve study should be reviewed carefully. It  
30 may not include all common and limited common element  
31 components that will require major maintenance, repair, or  
32 replacement in future years, and may not include regular  
33 contributions to a reserve account for the cost of such  
34 maintenance, repair, or replacement. The failure to include a  
35 component in a reserve study, or to provide contributions to a  
36 reserve account for a component, may, under some circumstances,  
37 require you to pay on demand as a special assessment your share

1 of common expenses for the cost of major maintenance, repair,  
2 or replacement of a reserve component."

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.34 RCW  
4 under the subchapter heading "Article 3" to read as follows:

5 An association may withdraw funds from its reserve account to pay  
6 for unforeseen or unbudgeted expenses. The board of directors shall  
7 record any such withdrawal in the minute books of the association,  
8 cause notice of any such withdrawal to be hand delivered or sent  
9 prepaid by first-class United States mail to the mailing address of  
10 each unit or to any other mailing address designated in writing by the  
11 unit owner, and adopt a repayment schedule not to exceed twenty-four  
12 months unless it determines that repayment within twenty-four months  
13 would impose an unreasonable burden on the unit owners.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.34 RCW  
15 under the subchapter heading "Article 3" to read as follows:

16 (1) Where more than three years have passed since the date of the  
17 last reserve study prepared by a reserve study professional, the owners  
18 of the units to which at least twenty percent of the votes are  
19 allocated may demand, in writing, to the association that the cost of  
20 a reserve study be included in the next budget and that the study be  
21 obtained by the end of that budget year. The written demand must refer  
22 to this section. The board of directors shall, upon receipt of the  
23 written demand, provide unit owners making the demand reasonable  
24 assurance that the board of directors will include a reserve study in  
25 the next budget and, if the budget is not rejected by the owners, will  
26 arrange for the completion of a reserve study.

27 (2) In the event a written demand is made and a reserve study is  
28 not timely prepared, a court may order specific performance and award  
29 reasonable attorneys' fees to the prevailing party in any legal action  
30 brought to enforce this section. An association may assert  
31 unreasonable hardship as an affirmative defense in any action brought  
32 against it under this section. Without limiting this affirmative  
33 defense, an unreasonable hardship exists where the cost of preparing a  
34 reserve study would exceed ten percent of the association's annual  
35 budget.

36 (3) A unit owner's duty to pay for common expenses shall not be  
37 excused because of the association's failure to comply with this

1 section or sections 3 through 7 of this act. A budget ratified by the  
2 unit owners under RCW 64.34.308(3) may not be invalidated because of  
3 the association's failure to comply with this section or sections 3  
4 through 7 of this act.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.34 RCW  
6 under the subchapter heading "Article 3" to read as follows:

7 Subject to section 5 of this act, the decisions relating to the  
8 preparation and updating of a reserve study must be made by the board  
9 of directors of the association in the exercise of the reasonable  
10 discretion of the board. Such decisions must include whether a reserve  
11 study will be prepared or updated, and whether the assistance of a  
12 reserve study professional will be utilized.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 64.34 RCW  
14 under the subchapter heading "Article 3" to read as follows:

15 Monetary damages or any other liability may not be awarded against  
16 or imposed upon the association, the officers or board of directors of  
17 the association, or those persons who may have provided advice or  
18 assistance to the association or its officers or directors, for failure  
19 to: Establish a reserve account; have a current reserve study prepared  
20 or updated in accordance with sections 2 through 6 of this act; or make  
21 the reserve disclosures in accordance with section 3 of this act and  
22 RCW 64.34.410(1)(oo) and 64.34.425(1)(s).

23 **Sec. 8.** RCW 64.34.020 and 2004 c 201 s 9 are each amended to read  
24 as follows:

25 In the declaration and bylaws, unless specifically provided  
26 otherwise or the context requires otherwise, and in this chapter:

27 (1) "Affiliate" means any person who controls, is controlled by, or  
28 is under common control with the referenced person. A person  
29 "controls" another person if the person: (a) Is a general partner,  
30 officer, director, or employer of the referenced person; (b) directly  
31 or indirectly or acting in concert with one or more other persons, or  
32 through one or more subsidiaries, owns, controls, holds with power to  
33 vote, or holds proxies representing, more than twenty percent of the  
34 voting interest in the referenced person; (c) controls in any manner  
35 the election of a majority of the directors of the referenced person;

1 or (d) has contributed more than twenty percent of the capital of the  
2 referenced person. A person "is controlled by" another person if the  
3 other person: (i) Is a general partner, officer, director, or employer  
4 of the person; (ii) directly or indirectly or acting in concert with  
5 one or more other persons, or through one or more subsidiaries, owns,  
6 controls, holds with power to vote, or holds proxies representing, more  
7 than twenty percent of the voting interest in the person; (iii)  
8 controls in any manner the election of a majority of the directors of  
9 the person; or (iv) has contributed more than twenty percent of the  
10 capital of the person. Control does not exist if the powers described  
11 in this subsection are held solely as security for an obligation and  
12 are not exercised.

13 (2) "Allocated interests" means the undivided interest in the  
14 common elements, the common expense liability, and votes in the  
15 association allocated to each unit.

16 (3) "Assessment" means all sums chargeable by the association  
17 against a unit including, without limitation: (a) Regular and special  
18 assessments for common expenses, charges, and fines imposed by the  
19 association; (b) interest and late charges on any delinquent account;  
20 and (c) costs of collection, including reasonable attorneys' fees,  
21 incurred by the association in connection with the collection of a  
22 delinquent owner's account.

23 (4) "Association" or "unit owners' association" means the unit  
24 owners' association organized under RCW 64.34.300.

25 (5) "Board of directors" means the body, regardless of name, with  
26 primary authority to manage the affairs of the association.

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

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

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

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

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

4 (10) "Contribution rate" means, in a reserve study as described in  
5 section 2 of this act, the dollar amount designated for major  
6 maintenance, repair, or replacement of reserve components.

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

24 ~~((+11+))~~ (12) "Conveyance" means any transfer of the ownership of  
25 a unit, including a transfer by deed or by real estate contract and,  
26 with respect to a unit in a leasehold condominium, a transfer by lease  
27 or assignment thereof, but shall not include a transfer solely for  
28 security.

29 ~~((+12+))~~ (13) "Dealer" means a person who, together with such  
30 person's affiliates, owns or has a right to acquire either six or more  
31 units in a condominium or fifty percent or more of the units in a  
32 condominium containing more than two units.

33 ~~((+13+))~~ (14) "Declarant" means:

34 (a) Any person who executes as declarant a declaration as defined  
35 in subsection ~~((+15+))~~ (16) of this section; or

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

1 (c) Any person who exercises special declarant rights or to whom  
2 special declarant rights are transferred; or

3 (d) Any person who is the owner of a fee interest in the real  
4 property which is subjected to the declaration at the time of the  
5 recording of an instrument pursuant to RCW 64.34.316 and who directly  
6 or through one or more affiliates is materially involved in the  
7 construction, marketing, or sale of units in the condominium created by  
8 the recording of the instrument.

9 ~~((14))~~ (15) "Declarant control" means the right of the declarant  
10 or persons designated by the declarant to appoint and remove officers  
11 and members of the board of directors, or to veto or approve a proposed  
12 action of the board or association, pursuant to RCW 64.34.308 (4) or  
13 (5).

14 ~~((15))~~ (16) "Declaration" means the document, however  
15 denominated, that creates a condominium by setting forth the  
16 information required by RCW 64.34.216 and any amendments to that  
17 document.

18 ~~((16))~~ (17) "Development rights" means any right or combination  
19 of rights reserved by a declarant in the declaration to: (a) Add real  
20 property or improvements to a condominium; (b) create units, common  
21 elements, or limited common elements within real property included or  
22 added to a condominium; (c) subdivide units or convert units into  
23 common elements; (d) withdraw real property from a condominium; or (e)  
24 reallocate limited common elements with respect to units that have not  
25 been conveyed by the declarant.

26 ~~((17))~~ (18) "Dispose" or "disposition" means a voluntary transfer  
27 or conveyance to a purchaser or lessee of any legal or equitable  
28 interest in a unit, but does not include the transfer or release of a  
29 security interest.

30 ~~((18))~~ (19) "Eligible mortgagee" means the holder of a mortgage  
31 on a unit that has filed with the secretary of the association a  
32 written request that it be given copies of notices of any action by the  
33 association that requires the consent of mortgagees.

34 ~~((19))~~ (20) "Foreclosure" means a forfeiture or judicial or  
35 nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

36 ~~((20))~~ (21) "Fully funded balance" means the current value of the  
37 deteriorated portion of all the reserve components.

1        (22) "Identifying number" means the designation of each unit in a  
2 condominium.

3        ~~((+21+))~~ (23) "Leasehold condominium" means a condominium in which  
4 all or a portion of the real property is subject to a lease, the  
5 expiration or termination of which will terminate the condominium or  
6 reduce its size.

7        ~~((+22+))~~ (24) "Limited common element" means a portion of the  
8 common elements allocated by the declaration or by operation of RCW  
9 64.34.204 (2) or (4) for the exclusive use of one or more but fewer  
10 than all of the units.

11        ~~((+23+))~~ (25) "Master association" means an organization described  
12 in RCW 64.34.276, whether or not it is also an association described in  
13 RCW 64.34.300.

14        ~~((+24+))~~ (26) "Mortgage" means a mortgage, deed of trust or real  
15 estate contract.

16        ~~((+25+))~~ (27) "Person" means a natural person, corporation,  
17 partnership, limited partnership, trust, governmental subdivision or  
18 agency, or other legal entity.

19        ~~((+26+))~~ (28) "Purchaser" means any person, other than a declarant  
20 or a dealer, who by means of a disposition acquires a legal or  
21 equitable interest in a unit other than (a) a leasehold interest,  
22 including renewal options, of less than twenty years at the time of  
23 creation of the unit, or (b) as security for an obligation.

24        ~~((+27+))~~ (29) "Real property" means any fee, leasehold or other  
25 estate or interest in, over, or under land, including structures,  
26 fixtures, and other improvements thereon and easements, rights and  
27 interests appurtenant thereto which by custom, usage, or law pass with  
28 a conveyance of land although not described in the contract of sale or  
29 instrument of conveyance. "Real property" includes parcels, with or  
30 without upper or lower boundaries, and spaces that may be filled with  
31 air or water.

32        ~~((+28+))~~ (30) "Replacement expense" means the anticipated actual  
33 cost of replacing a reserve component.

34        (31) "Residential purposes" means use for dwelling or recreational  
35 purposes, or both.

36        ~~((+29+))~~ (32) "Reserve components" means common elements whose cost  
37 of maintenance, repair, or replacement is infrequent, significant, and  
38 impractical to include in an annual budget.

1        (33) "Reserve study professional" means an independent person  
2 suitably qualified by knowledge, skill, experience, training, or  
3 education to prepare a reserve study in accordance with sections 2 and  
4 3 of this act.

5        (34) "Special declarant rights" means rights reserved for the  
6 benefit of a declarant to: (a) Complete improvements indicated on  
7 survey maps and plans filed with the declaration under RCW 64.34.232;  
8 (b) exercise any development right under RCW 64.34.236; (c) maintain  
9 sales offices, management offices, signs advertising the condominium,  
10 and models under RCW 64.34.256; (d) use easements through the common  
11 elements for the purpose of making improvements within the condominium  
12 or within real property which may be added to the condominium under RCW  
13 64.34.260; (e) make the condominium part of a larger condominium or a  
14 development under RCW 64.34.280; (f) make the condominium subject to a  
15 master association under RCW 64.34.276; or (g) appoint or remove any  
16 officer of the association or any master association or any member of  
17 the board of directors, or to veto or approve a proposed action of the  
18 board or association, during any period of declarant control under RCW  
19 64.34.308(4).

20        ~~((+30+))~~ (35) "Timeshare" shall have the meaning specified in the  
21 timeshare act, RCW 64.36.010(11).

22        ~~((+31+))~~ (36) "Unit" means a physical portion of the condominium  
23 designated for separate ownership, the boundaries of which are  
24 described pursuant to RCW 64.34.216(1)(d). "Separate ownership"  
25 includes leasing a unit in a leasehold condominium under a lease that  
26 expires contemporaneously with any lease, the expiration or termination  
27 of which will remove the unit from the condominium.

28        ~~((+32+))~~ (37) "Unit owner" means a declarant or other person who  
29 owns a unit or leases a unit in a leasehold condominium under a lease  
30 that expires simultaneously with any lease, the expiration or  
31 termination of which will remove the unit from the condominium, but  
32 does not include a person who has an interest in a unit solely as  
33 security for an obligation. "Unit owner" means the vendee, not the  
34 vendor, of a unit under a real estate contract.

35        (38) "Useful life" means the total number of years of estimated  
36 service life of a reserve component before major maintenance, repair,  
37 or replacement expense is estimated to occur.

1       **Sec. 9.** RCW 64.34.304 and 1993 c 429 s 11 are each amended to read  
2 as follows:

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

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

6       (b) Adopt and amend budgets for revenues, expenditures, and  
7 reserves, and impose and collect assessments for common expenses from  
8 unit owners;

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

11       (d) Institute, defend, or intervene in litigation or administrative  
12 proceedings in its own name on behalf of itself or two or more unit  
13 owners on matters affecting the condominium;

14       (e) Make contracts and incur liabilities;

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

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

19       (h) Acquire, hold, encumber, and convey in its own name any right,  
20 title, or interest to real or personal property, but common elements  
21 may be conveyed or subjected to a security interest only pursuant to  
22 RCW 64.34.348;

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

26       (j) Impose and collect any payments, fees, or charges for the use,  
27 rental, or operation of the common elements, other than limited common  
28 elements described in RCW 64.34.204 (2) and (4), and for services  
29 provided to unit owners;

30       (k) Impose and collect charges for late payment of assessments  
31 pursuant to RCW 64.34.364(13) and, after notice and an opportunity to  
32 be heard by the board of directors or by such representative designated  
33 by the board of directors and in accordance with such procedures as  
34 provided in the declaration or bylaws or rules and regulations adopted  
35 by the board of directors, levy reasonable fines in accordance with a  
36 previously established schedule thereof adopted by the board of  
37 directors and furnished to the owners for violations of the  
38 declaration, bylaws, and rules and regulations of the association;

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

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

6 (n) Assign its right to future income, including the right to  
7 receive common expense assessments, but only to the extent the  
8 declaration provides;

9 (o) Join in a petition for the establishment of a parking and  
10 business improvement area, participate in the rate payers' board or  
11 other advisory body set up by the legislative authority for operation  
12 of a parking and business improvement area, and pay special assessments  
13 levied by the legislative authority on a parking and business  
14 improvement area encompassing the condominium property for activities  
15 and projects which benefit the condominium directly or indirectly;

16 (p) Establish and administer a reserve fund as described in section  
17 2 of this act;

18 (q) Prepare a reserve study as described in section 2 of this act;

19 (r) Exercise any other powers conferred by the declaration or  
20 bylaws;

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

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

25 (2) The declaration may not impose limitations on the power of the  
26 association to deal with the declarant which are more restrictive than  
27 the limitations imposed on the power of the association to deal with  
28 other persons.

29 **Sec. 10.** RCW 64.34.410 and 2005 c 456 s 19 are each amended to  
30 read as follows:

31 (1) A public offering statement shall contain the following  
32 information:

33 (a) The name and address of the condominium;

34 (b) The name and address of the declarant;

35 (c) The name and address of the management company, if any;

36 (d) The relationship of the management company to the declarant, if  
37 any;

- 1 (e) A list of up to the five most recent condominium projects  
2 completed by the declarant or an affiliate of the declarant within the  
3 past five years, including the names of the condominiums, their  
4 addresses, and the number of existing units in each. For the purpose  
5 of this section, a condominium is "completed" when any one unit therein  
6 has been rented or sold;
- 7 (f) The nature of the interest being offered for sale;
- 8 (g) A brief description of the permitted uses and use restrictions  
9 pertaining to the units and the common elements;
- 10 (h) A brief description of the restrictions, if any, on the renting  
11 or leasing of units by the declarant or other unit owners, together  
12 with the rights, if any, of the declarant to rent or lease at least a  
13 majority of units;
- 14 (i) The number of existing units in the condominium and the maximum  
15 number of units that may be added to the condominium;
- 16 (j) A list of the principal common amenities in the condominium  
17 which materially affect the value of the condominium and those that  
18 will or may be added to the condominium;
- 19 (k) A list of the limited common elements assigned to the units  
20 being offered for sale;
- 21 (l) The identification of any real property not in the condominium,  
22 the owner of which has access to any of the common elements, and a  
23 description of the terms of such access;
- 24 (m) The identification of any real property not in the condominium  
25 to which unit owners have access and a description of the terms of such  
26 access;
- 27 (n) The status of construction of the units and common elements,  
28 including estimated dates of completion if not completed;
- 29 (o) The estimated current common expense liability for the units  
30 being offered;
- 31 (p) An estimate of any payment with respect to the common expense  
32 liability for the units being offered which will be due at closing;
- 33 (q) The estimated current amount and purpose of any fees not  
34 included in the common expenses and charged by the declarant or the  
35 association for the use of any of the common elements;
- 36 (r) Any assessments which have been agreed to or are known to the  
37 declarant and which, if not paid, may constitute a lien against any  
38 units or common elements in favor of any governmental agency;

1 (s) The identification of any parts of the condominium, other than  
2 the units, which any individual owner will have the responsibility for  
3 maintaining;

4 (t) If the condominium involves a conversion condominium, the  
5 information required by RCW 64.34.415;

6 (u) Whether timesharing is restricted or prohibited, and if  
7 restricted, a general description of such restrictions;

8 (v) A list of all development rights reserved to the declarant and  
9 all special declarant rights reserved to the declarant, together with  
10 the dates such rights must terminate, and a copy of or reference by  
11 recording number to any recorded transfer of a special declarant right;

12 (w) A description of any material differences in terms of  
13 furnishings, fixtures, finishes, and equipment between any model unit  
14 available to the purchaser at the time the agreement for sale is  
15 executed and the unit being offered;

16 (x) Any liens on real property to be conveyed to the association  
17 required to be disclosed pursuant to RCW 64.34.435(2)(b);

18 (y) A list of any physical hazards known to the declarant which  
19 particularly affect the condominium or the immediate vicinity in which  
20 the condominium is located and which are not readily ascertainable by  
21 the purchaser;

22 (z) A brief description of any construction warranties to be  
23 provided to the purchaser;

24 (aa) Any building code violation citations received by the  
25 declarant in connection with the condominium which have not been  
26 corrected;

27 (bb) A statement of any unsatisfied judgments or pending suits  
28 against the association, a statement of the status of any pending suits  
29 material to the condominium of which the declarant has actual  
30 knowledge, and a statement of any litigation brought by an owners'  
31 association, unit owner, or governmental entity in which the declarant  
32 or any affiliate of the declarant has been a defendant, arising out of  
33 the construction, sale, or administration of any condominium within the  
34 previous five years, together with the results thereof, if known;

35 (cc) Any rights of first refusal to lease or purchase any unit or  
36 any of the common elements;

37 (dd) The extent to which the insurance provided by the association  
38 covers furnishings, fixtures, and equipment located in the unit;

1 (ee) A notice which describes a purchaser's right to cancel the  
2 purchase agreement or extend the closing under RCW 64.34.420, including  
3 applicable time frames and procedures;

4 (ff) Any reports or statements required by RCW 64.34.415 or  
5 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering  
6 statement of a condominium in connection with which a final certificate  
7 of occupancy was issued more than sixty calendar months prior to the  
8 preparation of the public offering statement whether or not the  
9 condominium is a conversion condominium as defined in RCW  
10 64.34.020(~~(+10)~~) (11);

11 (gg) A list of the documents which the prospective purchaser is  
12 entitled to receive from the declarant before the rescission period  
13 commences;

14 (hh) A notice which states: A purchaser may not rely on any  
15 representation or express warranty unless it is contained in the public  
16 offering statement or made in writing signed by the declarant or by any  
17 person identified in the public offering statement as the declarant's  
18 agent;

19 (ii) A notice which states: This public offering statement is only  
20 a summary of some of the significant aspects of purchasing a unit in  
21 this condominium and the condominium documents are complex, contain  
22 other important information, and create binding legal obligations. You  
23 should consider seeking the assistance of legal counsel;

24 (jj) Any other information and cross-references which the declarant  
25 believes will be helpful in describing the condominium to the  
26 recipients of the public offering statement, all of which may be  
27 included or not included at the option of the declarant;

28 (kk) A notice that addresses compliance or noncompliance with the  
29 housing for older persons act of 1995, P.L. 104-76, as enacted on  
30 December 28, 1995;

31 (ll) A notice that is substantially in the form required by RCW  
32 64.50.050;

33 (mm) A statement, as required by RCW 64.35.210, as to whether the  
34 units or common elements of the condominium are covered by a qualified  
35 warranty, and a history of claims under any such warranty; (~~and~~)

36 (nn) A statement that the building enclosure has been designed and  
37 inspected as required by RCW 64.55.010 through 64.55.090, and, if

1 required, repaired in accordance with the requirements of RCW  
2 64.55.090; and

3 (oo) If the association does not have a reserve study that has been  
4 prepared in accordance with sections 2 and 3 of this act or its  
5 governing documents, the following disclosure:

6 "This association does not have a current reserve study.  
7 The lack of a current reserve study poses certain risks to you,  
8 the purchaser. Insufficient reserves may, under some  
9 circumstances, require you to pay on demand as a special  
10 assessment your share of common expenses for the cost of major  
11 maintenance, repair, or replacement of a common element."

12 (2) The public offering statement shall include copies of each of  
13 the following documents: The declaration, the survey map and plans,  
14 the articles of incorporation of the association, bylaws of the  
15 association, rules and regulations, if any, current or proposed budget  
16 for the association, the balance sheet of the association current  
17 within ninety days if assessments have been collected for ninety days  
18 or more, the association's current reserve study, if any, and the  
19 inspection and repair report or reports prepared in accordance with the  
20 requirements of RCW 64.55.090.

21 If any of the foregoing documents listed in this subsection are not  
22 available because they have not been executed, adopted, or recorded,  
23 drafts of such documents shall be provided with the public offering  
24 statement, and, before closing the sale of a unit, the purchaser shall  
25 be given copies of any material changes between the draft of the  
26 proposed documents and the final documents.

27 (3) The disclosures required by subsection (1)(g), (k), (s), (u),  
28 (v), and (cc) of this section shall also contain a reference to  
29 specific sections in the condominium documents which further explain  
30 the information disclosed.

31 (4) The disclosures required by subsection (1)(ee), (hh), (ii), and  
32 (ll) of this section shall be located at the top of the first page of  
33 the public offering statement and be typed or printed in ten-point bold  
34 face type size.

35 (5) A declarant shall promptly amend the public offering statement  
36 to reflect any material change in the information required by this  
37 section.

1       **Sec. 11.** RCW 64.34.425 and 2004 c 201 s 4 are each amended to read  
2 as follows:

3       (1) Except in the case of a sale where delivery of a public  
4 offering statement is required, or unless exempt under RCW  
5 64.34.400(2), a unit owner shall furnish to a purchaser before  
6 execution of any contract for sale of a unit, or otherwise before  
7 conveyance, a resale certificate, signed by an officer or authorized  
8 agent of the association and based on the books and records of the  
9 association and the actual knowledge of the person signing the  
10 certificate, containing:

11       (a) A statement disclosing any right of first refusal or other  
12 restraint on the free alienability of the unit contained in the  
13 declaration;

14       (b) A statement setting forth the amount of the monthly common  
15 expense assessment and any unpaid common expense or special assessment  
16 currently due and payable from the selling unit owner and a statement  
17 of any special assessments that have been levied against the unit which  
18 have not been paid even though not yet due;

19       (c) A statement, which shall be current to within forty-five days,  
20 of any common expenses or special assessments against any unit in the  
21 condominium that are past due over thirty days;

22       (d) A statement, which shall be current to within forty-five days,  
23 of any obligation of the association which is past due over thirty  
24 days;

25       (e) A statement of any other fees payable by unit owners;

26       (f) A statement of any anticipated repair or replacement cost in  
27 excess of five percent of the annual budget of the association that has  
28 been approved by the board of directors;

29       (g) A statement of the amount of any reserves for repair or  
30 replacement and of any portions of those reserves currently designated  
31 by the association for any specified projects;

32       (h) The annual financial statement of the association, including  
33 the audit report if it has been prepared, for the year immediately  
34 preceding the current year;

35       (i) A balance sheet and a revenue and expense statement of the  
36 association prepared on an accrual basis, which shall be current to  
37 within one hundred twenty days;

38       (j) The current operating budget of the association;

1 (k) A statement of any unsatisfied judgments against the  
2 association and the status of any pending suits or legal proceedings in  
3 which the association is a plaintiff or defendant;

4 (l) A statement describing any insurance coverage provided for the  
5 benefit of unit owners;

6 (m) A statement as to whether there are any alterations or  
7 improvements to the unit or to the limited common elements assigned  
8 thereto that violate any provision of the declaration;

9 (n) A statement of the number of units, if any, still owned by the  
10 declarant, whether the declarant has transferred control of the  
11 association to the unit owners, and the date of such transfer;

12 (o) A statement as to whether there are any violations of the  
13 health or building codes with respect to the unit, the limited common  
14 elements assigned thereto, or any other portion of the condominium;

15 (p) A statement of the remaining term of any leasehold estate  
16 affecting the condominium and the provisions governing any extension or  
17 renewal thereof;

18 (q) A copy of the declaration, the bylaws, the rules or regulations  
19 of the association, the association's current reserve study, if any,  
20 and any other information reasonably requested by mortgagees of  
21 prospective purchasers of units. Information requested generally by  
22 the federal national mortgage association, the federal home loan bank  
23 board, the government national mortgage association, the veterans  
24 administration and the department of housing and urban development  
25 shall be deemed reasonable, provided such information is reasonably  
26 available to the association; ((and))

27 (r) A statement, as required by RCW 64.35.210, as to whether the  
28 units or common elements of the condominium are covered by a qualified  
29 warranty, and a history of claims under any such warranty; and

30 (s) If the association does not have a reserve study that has been  
31 prepared in accordance with sections 2 and 3 of this act or its  
32 governing documents, the following disclosure:

33 "This association does not have a current reserve study.  
34 The lack of a current reserve study poses certain risks to you,  
35 the purchaser. Insufficient reserves may, under some  
36 circumstances, require you to pay on demand as a special  
37 assessment your share of common expenses for the cost of major  
38 maintenance, repair, or replacement of a common element."

1           (2) The association, within ten days after a request by a unit  
2 owner, and subject to payment of any fee imposed pursuant to RCW  
3 64.34.304(1)(1), shall furnish a resale certificate signed by an  
4 officer or authorized agent of the association and containing the  
5 information necessary to enable the unit owner to comply with this  
6 section. For the purposes of this chapter, a reasonable charge for the  
7 preparation of a resale certificate may not exceed one hundred fifty  
8 dollars. The association may charge a unit owner a nominal fee for  
9 updating a resale certificate within six months of the unit owner's  
10 request. The unit owner shall also sign the certificate but the unit  
11 owner is not liable to the purchaser for any erroneous information  
12 provided by the association and included in the certificate unless and  
13 to the extent the unit owner had actual knowledge thereof.

14           (3) A purchaser is not liable for any unpaid assessment or fee  
15 against the unit as of the date of the certificate greater than the  
16 amount set forth in the certificate prepared by the association unless  
17 and to the extent such purchaser had actual knowledge thereof. A unit  
18 owner is not liable to a purchaser for the failure or delay of the  
19 association to provide the certificate in a timely manner, but the  
20 purchaser's contract is voidable by the purchaser until the certificate  
21 has been provided and for five days thereafter or until conveyance,  
22 whichever occurs first.

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