
SENATE BILL 6054

State of Washington

61st Legislature

2009 Regular Session

By Senators Fraser, Fairley, and Tom

Read first time 02/18/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to homeowners' associations; amending RCW
2 64.38.005, 64.38.010, 64.38.015, 64.38.020, 64.38.025, 64.38.030,
3 64.38.035, 64.38.040, and 64.38.050; adding new sections to chapter
4 64.38 RCW; and creating a new section.

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

6 **Sec. 1.** RCW 64.38.005 and 1995 c 283 s 1 are each amended to read
7 as follows:

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

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

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

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

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

5 For purposes of this chapter:

6 (1) "Homeowners' association" or "association" means a corporation,
7 unincorporated association, or other legal entity, each member of which
8 is an owner of residential real property located within the
9 association's jurisdiction, as described in the governing documents,
10 and by virtue of membership (~~(or ownership of property)~~), the owner is
11 obligated to pay (~~(real property taxes, insurance premiums, maintenance~~
12 ~~costs, or for improvement of real property other than that which is~~
13 ~~owned by the member)~~) assessments pursuant to the governing documents.
14 "Homeowners' association" does not mean an association created under
15 chapter 64.32 or 64.34 RCW.

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

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

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

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

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

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

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

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

36 (c) Costs of collection, including reasonable attorneys' fees,

1 incurred by the association in connection with the collection of an
2 owner's delinquent account.

3 This subsection (7) supersedes any inconsistent provision in the
4 governing documents.

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

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

13 (10) "Cooperative" means a community in which the residential real
14 property is owned by an association where each of those members is
15 entitled, by virtue of his or her ownership interest in the
16 association, to exclusive possession of a portion of the property.

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

21 (12) "Declaration" means the declaration of covenants, conditions,
22 and restrictions or any other document, however denominated, that is
23 recorded in every county in which any portion of the community is
24 located and that provides for the establishment of an association to
25 govern the community. In the case of a cooperative, "declaration"
26 means the document or documents, however denominated, that create the
27 cooperative housing association that owns the residential real property
28 comprising the cooperative, whether or not the document or documents
29 are recorded.

30 (13) "Lot" means a physical portion of a community designated for
31 separate ownership or occupancy and designated for residential use, the
32 boundaries of which are described in the real property records of every
33 county in which any portion of the community is located. Within a
34 cooperative, "lot" means that portion of the community designated for
35 exclusive possession by a member of the cooperative's association.
36 "Lot" does not mean an apartment created under chapter 64.32 RCW or a
37 unit created under chapter 64.34 RCW.

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

5 (15) "Person" means a natural person, corporation, partnership,
6 limited partnership, trust, government subdivision or agency, or other
7 legal entity.

8 (16) "Rules" means the rules, regulations, and policies,
9 irrespective of their designated name, that are adopted by the members
10 of the board of an association in accordance with the governing
11 documents and that supplement, but do not contradict or contravene, the
12 governing documents.

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

15 The membership of an association at all times shall consist
16 exclusively of the owners of all real property over which the
17 association has jurisdiction, both developed and undeveloped or, in the
18 case of a cooperative, the members of the association who by virtue of
19 their ownership interest in the association have exclusive possession
20 of a lot.

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

23 Unless otherwise provided in the ~~((governing—documents))~~
24 declaration, an association may:

25 (1) Adopt and amend bylaws, resolutions, policies, rules, and
26 regulations that are not inconsistent with the declaration or with this
27 chapter;

28 (2) Adopt and amend budgets for revenues, expenditures, and
29 reserves, and impose and collect assessments for common expenses from
30 owners;

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

33 (4) Institute, defend, or intervene in litigation or administrative
34 proceedings in its own name on behalf of itself or two or more owners
35 on matters affecting the homeowners' association, but not on behalf of

- 1 owners involved in disputes that are not the responsibility of the
2 association;
- 3 (5) Make contracts and incur liabilities;
- 4 (6) Regulate the use, maintenance, repair, replacement, and
5 modification of common areas;
- 6 (7) Cause additional improvements to be made as a part of the
7 common areas;
- 8 (8) Acquire, hold, encumber, and convey in its own name any right,
9 title, or interest to real or personal property;
- 10 (9) Grant easements, leases, licenses, and concessions through or
11 over the common areas and petition for or consent to the vacation of
12 streets and alleys;
- 13 (10) Impose and collect any payments, fees, or charges for the use,
14 rental, or operation of the common areas;
- 15 (11) Impose and collect charges for late payments of assessments
16 ~~((and, after notice and an opportunity to be heard by the board of
17 directors or by the representative designated by the board of directors
18 and in accordance with the procedures as provided in the bylaws or
19 rules and regulations adopted by the board of directors, levy
20 reasonable fines in accordance with a previously established schedule
21 adopted by the board of directors and furnished to the owners for
22 violation of the bylaws, rules, and regulations of the association))~~;
- 23 (12) Take enforcement action with respect to any violation of the
24 governing documents;
- 25 (13) After notice and an opportunity to be heard by the board of
26 directors or by the representative designated by the board of
27 directors, and in accordance with the procedures provided in the
28 governing documents, levy reasonable fines in accordance with a
29 previously established schedule adopted by the board of directors and
30 furnished to the owners for violations of the governing documents;
- 31 (14) Exercise any other powers conferred by the declaration,
32 articles, or bylaws;
- 33 ~~((+13))~~ (15) Exercise all other powers that may be exercised in
34 this state by the same type of ((corporation)) legal entity as the
35 association, provided those powers do not conflict with any duties
36 imposed on an association in this chapter; and
- 37 ~~((+14))~~ (16) Exercise any other powers necessary and proper for
38 the governance and operation of the association.

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

3 (1) This section establishes voluntary procedures for the
4 enforcement of governing documents.

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

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

10 (i) A reference to the rule or rules that the owner allegedly
11 violated;

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

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

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

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

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

24 (b) Upon the timely request for a hearing from an owner, the
25 association must set a hearing date no less than thirty and no more
26 than sixty days from the association's receipt of the request. The
27 association must notify the owner of the hearing at least twenty days
28 before the hearing and must include with the notification a copy of the
29 association's rules of procedure for conducting a hearing;

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

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

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

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

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

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

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

19 (2) The board of directors shall not act on behalf of the
20 association to amend the articles of incorporation, to take any action
21 that requires the vote or approval of the owners, to terminate the
22 association, to elect members of the board of directors, or to
23 determine the qualifications, powers, and duties, or terms of office of
24 members of the board of directors; but the board of directors may fill
25 vacancies in its membership of the unexpired portion of any term.

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

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

5 NEW SECTION. Sec. 8. A new section is added to chapter 64.38 RCW
6 to read as follows:

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

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

11 Notwithstanding any inconsistent provision in the governing
12 documents or other applicable statutes, any member of the board of
13 directors may be removed with or without cause by a majority vote of
14 the owners (1) entitled to elect the board member and present, in
15 person or by proxy, and (2) entitled to vote at any regular or special
16 meeting of the owners at which a quorum is present.

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

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

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

25 (2) Election by the board of directors of the officers of the
26 association as the bylaws specify;

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

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

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

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

1 **Sec. 11.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read
2 as follows:

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

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

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

27 ~~((2) Except as provided in this subsection, all meetings of the~~
28 ~~board of directors shall be open for observation by all owners of~~
29 ~~record and their authorized agents. The board of directors shall keep~~
30 ~~minutes of all actions taken by the board, which shall be available to~~
31 ~~all owners. Upon the affirmative vote in open meeting to assemble in~~
32 ~~closed session, the board of directors may convene in closed executive~~
33 ~~session to consider personnel matters; consult with legal counsel or~~
34 ~~consider communications with legal counsel; and discuss likely or~~
35 ~~pending litigation, matters involving possible violations of the~~
36 ~~governing documents of the association, and matters involving the~~
37 ~~possible liability of an owner to the association. The motion shall~~
38 ~~state specifically the purpose for the closed session. Reference to~~

1 ~~the motion and the stated purpose for the closed session shall be~~
2 ~~included in the minutes. The board of directors shall restrict the~~
3 ~~consideration of matters during the closed portions of meetings only to~~
4 ~~those purposes specifically exempted and stated in the motion. No~~
5 ~~motion, or other action adopted, passed, or agreed to in closed session~~
6 ~~may become effective unless the board of directors, following the~~
7 ~~closed session, reconvenes in open meeting and votes in the open~~
8 ~~meeting on such motion, or other action which is reasonably identified.~~
9 ~~The requirements of this subsection shall not require the disclosure of~~
10 ~~information in violation of law or which is otherwise exempt from~~
11 ~~disclosure.))~~

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

14 Except as provided in this section, all meetings of the board of
15 directors shall be open for observation by all owners of record and
16 their authorized agents. The board of directors shall keep minutes of
17 all actions taken by the board, which must be available to all owners.
18 Upon the affirmative vote in open meeting to assemble in closed
19 session, the board of directors may convene in closed executive session
20 to consider personnel matters; consult with legal counsel or consider
21 communications with legal counsel; and discuss likely or pending
22 litigation, matters involving possible violations of the governing
23 documents of the association, and matters involving the possible
24 liability of an owner to the association. The motion must state
25 specifically the purpose for the closed session. Reference to the
26 motion and the stated purpose for the closed session must be included
27 in the minutes. The board of directors shall restrict the
28 consideration of matters during the closed portions of meetings only to
29 those purposes specifically exempted and stated in the motion. A
30 motion, or other action adopted, passed, or agreed to in closed session
31 may not become effective unless the board of directors, following the
32 closed session, reconvenes in open meeting and votes in the open
33 meeting on such motion, or other action that is reasonably identified.
34 This section does not require the disclosure of information in
35 violation of law or that is otherwise exempt from disclosure. This
36 section supersedes any conflicting provisions in Title 23 or 24 RCW or
37 in the association's governing documents.

1 **Sec. 13.** RCW 64.38.040 and 1995 c 283 s 8 are each amended to read
2 as follows:

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

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

10 For declarations that exist before the effective date of this
11 section:

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

24 (2) If the court finds that the percentage of votes set forth in
25 the declaration is an unreasonable burden on the ability of the owners
26 to amend the declaration and of the association to administer the
27 property under its jurisdiction, the court shall enter an order
28 striking the percentage of votes from the declaration and substituting
29 the percentage of votes that the court determines to be appropriate in
30 the circumstances. The court shall not mandate approval of less than
31 sixty-seven percent of the votes in the association to amend any
32 provision of the declaration.

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

35 (1) Except as provided in subsection (2) of this section,
36 declarations recorded after the effective date of this section can be

1 amended with the approval of at least sixty-seven percent of the total
2 votes in the association, or any larger percentage specified in the
3 declaration.

4 (2) A declarant may unilaterally amend the declaration, but only if
5 the right to amend is clearly stated in the declaration and if the
6 amendment:

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

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

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

14 (d) Enables any title insurance company to issue title insurance
15 coverage for the lots;

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

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

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

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

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

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

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

34 For purposes of this subsection, "eligible mortgagee" means the
35 holder of a mortgage on a lot that has filed with the secretary of the
36 association a written request for copies of notices of any action by
37 the association that requires the consent of mortgagees that includes
38 the lot number and address of the property subject to the mortgage. If

1 an eligible mortgagee fails to respond to a request for approval within
2 thirty days following the association's issuance of a notice requesting
3 such approval, the eligible mortgagee's approval is deemed granted.

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

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

12 NEW SECTION. **Sec. 16.** A new section is added to chapter 64.38 RCW
13 to read as follows:

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

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

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

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

28 (a) The board of directors shall submit all bylaws adopted,
29 amended, or rescinded by the board to a vote of the members. The vote
30 must be held at the next regularly scheduled annual meeting of the
31 association, or at a special meeting held before the next annual
32 meeting.

33 (b) The notice of the annual or special meeting must include the
34 text of any existing bylaw that the board has approved for amendment or
35 rescission, and the text of any new or amended bylaw approved by the
36 board.

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

6 (d) The proposed bylaw change is deemed approved and ratified by
7 the members if a majority of all the votes in the association vote at
8 the meeting, in person or by proxy, to approve the bylaw change
9 approved by the board.

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

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

15 For rules, or amendments to rules, adopted after the effective date
16 of this section:

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

19 (a) The rule is in writing;

20 (b) The rule is required by law or, within the authority of the
21 board, conferred by law or by the declaration;

22 (c) The rule is consistent with the governing documents; and

23 (d) The rule is adopted or amended in substantial compliance with
24 the requirements of this chapter.

25 (2) Except for emergency rules, the board of directors must provide
26 the association's members with notice and an opportunity to comment on
27 any proposed new or amended rule before the board is authorized to
28 adopt or enforce that rule. For purposes of this section, an
29 "emergency rule" is a rule that is necessary for the immediate
30 preservation of health and safety or a rule that sets forth specific
31 rights or obligations affecting the association or its members under
32 state statutes or administrative rules. Emergency rules become
33 effective immediately, subject to the members' right to request a
34 ratification vote under subsection (3) of this section.

35 (3) Except for emergency rules, rules adopted by the board of
36 directors following notice and an opportunity for comment become
37 effective thirty days after notice of the rules is provided to the

1 members in the manner authorized by the governing documents, unless a
2 written petition signed by twenty percent of the total votes in the
3 association is submitted to the board within that thirty-day period
4 requesting a ratification vote on the proposed rule. If a ratification
5 vote is requested, the association shall use the following process for
6 the ratification vote:

7 (a) The board of directors must submit the rules on which a
8 ratification vote has been requested to a vote of the members. The
9 vote must be conducted at the next regularly scheduled annual meeting
10 of the association, or at a special meeting held before the next annual
11 meeting.

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

14 (c) Unless the governing documents specify a longer advance notice
15 period for an association meeting, notice of the meeting, at which the
16 ratification vote will be conducted, must be provided at least ten days
17 in advance of the meeting and shall not be provided more than sixty
18 days in advance of the meeting.

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

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

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

31 (a) The board shall give notice of a proposed rule change to the
32 owners. The notice must include the following information: (i) The
33 text of the proposed rule change; (ii) a description of the purpose and
34 effect of the proposed rule change; and (iii) the deadline for
35 submission of a comment on the proposed rule change.

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

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

5 (d) The board shall give notice of a rule change to the owners.
6 The notice must set out the text of the rule change and state the date
7 the rule change takes effect. Except for emergency rules, the date the
8 rule change takes effect must not be less than thirty days after notice
9 of the rule change is provided in the manner authorized in the
10 governing documents.

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

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

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

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

29 (2) Regardless of any period provided in the declaration, a period
30 of declarant control terminates no later than the earliest of: (a)
31 Sixty days after conveyance of seventy-five percent of the lots that
32 may be created to lot owners other than a declarant; or (b) two years
33 after the last conveyance or transfer of record of a lot except as
34 security for a debt, pursuant to which the declarant voluntarily
35 surrenders the right to further appoint and remove officers and members
36 of the board of directors. A declarant may voluntarily surrender the

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

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

16 **Sec. 21.** RCW 64.38.050 and 1995 c 283 s 10 are each amended to
17 read as follows:

18 (1) Any violation of the provisions of this chapter entitles an
19 aggrieved party to any remedy provided by law or in equity. The court,
20 in an appropriate case, may award reasonable attorneys' fees to the
21 prevailing party.

22 (2) The court must award attorneys' fees to a homeowner plaintiff
23 who prevails in a suit to enforce chapter 64.38 RCW or the
24 association's governing documents. The court may also award exemplary
25 damages to homeowners upon a determination that the board of directors
26 acted in bad faith.

27 NEW SECTION. **Sec. 22.** The code reviser shall alphabetize and
28 renumber the definitions in RCW 64.38.010.

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