

ESHB 1309 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 04/06/2011

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

3 "Sec. 1. RCW 64.34.020 and 2008 c 115 s 8 are each amended to read  
4 as follows:

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

7 (1) "Affiliate" means any person who controls, is controlled by, or  
8 is under common control with the referenced person. A person  
9 "controls" another person if the person: (a) Is a general partner,  
10 officer, director, or employer of the referenced person; (b) directly  
11 or indirectly or acting in concert with one or more other persons, or  
12 through one or more subsidiaries, owns, controls, holds with power to  
13 vote, or holds proxies representing, more than twenty percent of the  
14 voting interest in the referenced person; (c) controls in any manner  
15 the election of a majority of the directors of the referenced person;  
16 or (d) has contributed more than twenty percent of the capital of the  
17 referenced person. A person "is controlled by" another person if the  
18 other person: (i) Is a general partner, officer, director, or employer  
19 of the person; (ii) directly or indirectly or acting in concert with  
20 one or more other persons, or through one or more subsidiaries, owns,  
21 controls, holds with power to vote, or holds proxies representing, more  
22 than twenty percent of the voting interest in the person; (iii)  
23 controls in any manner the election of a majority of the directors of  
24 the person; or (iv) has contributed more than twenty percent of the  
25 capital of the person. Control does not exist if the powers described  
26 in this subsection are held solely as security for an obligation and  
27 are not exercised.

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

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

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

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

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

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

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

19 (9) "Condominium" means real property, portions of which are  
20 designated for separate ownership and the remainder of which is  
21 designated for common ownership solely by the owners of those portions.  
22 Real property is not a condominium unless the undivided interests in  
23 the common elements are vested in the unit owners, and unless a  
24 declaration and a survey map and plans have been recorded pursuant to  
25 this chapter.

26 (10) "Contribution rate" means, in a reserve study as described in  
27 RCW 64.34.380, the amount contributed to the reserve account so that  
28 the association will have cash reserves to pay major maintenance,  
29 repair, or replacement costs without the need of a special assessment.

30 (11) "Conversion condominium" means a condominium (a) that at any  
31 time before creation of the condominium was lawfully occupied wholly or  
32 partially by a tenant or subtenant for residential purposes pursuant to  
33 a rental agreement, oral or written, express or implied, for which the  
34 tenant or subtenant had not received the notice described in (b) of  
35 this subsection; or (b) that, at any time within twelve months before  
36 the conveyance of, or acceptance of an agreement to convey, any unit  
37 therein other than to a declarant or any affiliate of a declarant, was  
38 lawfully occupied wholly or partially by a residential tenant of a

1 declarant or an affiliate of a declarant and such tenant was not  
2 notified in writing, prior to lawfully occupying a unit or executing a  
3 rental agreement, whichever event first occurs, that the unit was part  
4 of a condominium and subject to sale. "Conversion condominium" shall  
5 not include a condominium in which, before July 1, 1990, any unit  
6 therein had been conveyed or been made subject to an agreement to  
7 convey to any transferee other than a declarant or an affiliate of a  
8 declarant.

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

14 (13) "Dealer" means a person who, together with such person's  
15 affiliates, owns or has a right to acquire either six or more units in  
16 a condominium or fifty percent or more of the units in a condominium  
17 containing more than two units.

18 (14) "Declarant" means:

19 (a) Any person who executes as declarant a declaration as defined  
20 in subsection (16) of this section; or

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

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

25 (d) Any person who is the owner of a fee interest in the real  
26 property which is subjected to the declaration at the time of the  
27 recording of an instrument pursuant to RCW 64.34.316 and who directly  
28 or through one or more affiliates is materially involved in the  
29 construction, marketing, or sale of units in the condominium created by  
30 the recording of the instrument.

31 (15) "Declarant control" means the right of the declarant or  
32 persons designated by the declarant to appoint and remove officers and  
33 members of the board of directors, or to veto or approve a proposed  
34 action of the board or association, pursuant to RCW 64.34.308 (~~(4)~~  
35 ~~or~~) (5) or (6).

36 (16) "Declaration" means the document, however denominated, that  
37 creates a condominium by setting forth the information required by RCW  
38 64.34.216 and any amendments to that document.

1 (17) "Development rights" means any right or combination of rights  
2 reserved by a declarant in the declaration to: (a) Add real property  
3 or improvements to a condominium; (b) create units, common elements, or  
4 limited common elements within real property included or added to a  
5 condominium; (c) subdivide units or convert units into common elements;  
6 (d) withdraw real property from a condominium; or (e) reallocate  
7 limited common elements with respect to units that have not been  
8 conveyed by the declarant.

9 (18) "Dispose" or "disposition" means a voluntary transfer or  
10 conveyance to a purchaser or lessee of any legal or equitable interest  
11 in a unit, but does not include the transfer or release of a security  
12 interest.

13 (19) "Effective age" means the difference between the estimated  
14 useful life and remaining useful life.

15 (20) "Eligible mortgagee" means the holder of a mortgage on a unit  
16 that has filed with the secretary of the association a written request  
17 that it be given copies of notices of any action by the association  
18 that requires the consent of mortgagees.

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

21 (22) "Fully funded balance" means the current value of the  
22 deteriorated portion, not the total replacement value, of all the  
23 reserve components. The fully funded balance for each reserve  
24 component is calculated by multiplying the current replacement cost of  
25 that reserve component by its effective age, then dividing the result  
26 by that reserve component's useful life. The sum total of all reserve  
27 components' fully funded balances is the association's fully funded  
28 balance.

29 (23) "Identifying number" means the designation of each unit in a  
30 condominium.

31 (24) "Leasehold condominium" means a condominium in which all or a  
32 portion of the real property is subject to a lease, the expiration or  
33 termination of which will terminate the condominium or reduce its size.

34 (25) "Limited common element" means a portion of the common  
35 elements allocated by the declaration or by operation of RCW 64.34.204  
36 (2) or (4) for the exclusive use of one or more but fewer than all of  
37 the units.

1 (26) "Master association" means an organization described in RCW  
2 64.34.276, whether or not it is also an association described in RCW  
3 64.34.300.

4 (27) "Mortgage" means a mortgage, deed of trust or real estate  
5 contract.

6 (28) "Person" means a natural person, corporation, partnership,  
7 limited partnership, trust, governmental subdivision or agency, or  
8 other legal entity.

9 (29) "Purchaser" means any person, other than a declarant or a  
10 dealer, who by means of a disposition acquires a legal or equitable  
11 interest in a unit other than (a) a leasehold interest, including  
12 renewal options, of less than twenty years at the time of creation of  
13 the unit, or (b) as security for an obligation.

14 (30) "Real property" means any fee, leasehold or other estate or  
15 interest in, over, or under land, including structures, fixtures, and  
16 other improvements thereon and easements, rights and interests  
17 appurtenant thereto which by custom, usage, or law pass with a  
18 conveyance of land although not described in the contract of sale or  
19 instrument of conveyance. "Real property" includes parcels, with or  
20 without upper or lower boundaries, and spaces that may be filled with  
21 air or water.

22 (31) "Remaining useful life" means the estimated time, in years,  
23 ~~((that a reserve component can be expected to continue to serve))~~  
24 before a reserve component will require major maintenance, repair, or  
25 replacement to perform its intended function.

26 (32) "Replacement cost" means the current cost of replacing,  
27 repairing, or restoring a reserve component to its original functional  
28 condition.

29 (33) "Residential purposes" means use for dwelling or recreational  
30 purposes, or both.

31 (34) "Reserve component(~~(s)~~)" means a common element(~~(s)~~) whose  
32 cost of maintenance, repair, or replacement is infrequent, significant,  
33 and impractical to include in an annual budget.

34 (35) "Reserve study professional" means an independent person who  
35 is suitably qualified by knowledge, skill, experience, training, or  
36 education to prepare a reserve study in accordance with RCW 64.34.380  
37 and 64.34.382.

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

16 (37) "Timeshare" shall have the meaning specified in the timeshare  
17 act, RCW 64.36.010(11).

18 (38) "Unit" means a physical portion of the condominium designated  
19 for separate ownership, the boundaries of which are described pursuant  
20 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit  
21 in a leasehold condominium under a lease that expires contemporaneously  
22 with any lease, the expiration or termination of which will remove the  
23 unit from the condominium.

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

31 (40) "Useful life" means the estimated time, (~~(in)~~) between years,  
32 that (~~(a reserve component can be expected to serve its intended~~  
33 ~~function))~~ major maintenance, repair, or replacement is estimated to  
34 occur.

35 (41) "Baseline funding plan" means establishing a reserve funding  
36 goal of maintaining a reserve account balance above zero dollars  
37 throughout the thirty-year study period described under RCW 64.34.380.

1       (42) "Full funding plan" means setting a reserve funding goal of  
2 achieving one hundred percent fully funded reserves by the end of the  
3 thirty-year study period described under RCW 64.34.380, in which the  
4 reserve account balance equals the sum of the deteriorated portion of  
5 all reserve components.

6       (43) "Significant assets" means that the current total cost of  
7 major maintenance, repair, and replacement of the reserve components is  
8 fifty percent or more of the gross budget of the association, excluding  
9 reserve account funds.

10       **Sec. 2.** RCW 64.34.308 and 1992 c 220 s 15 are each amended to read  
11 as follows:

12       (1) Except as provided in the declaration, the bylaws, subsection  
13 (2) of this section, or other provisions of this chapter, the board of  
14 directors shall act in all instances on behalf of the association. In  
15 the performance of their duties, the officers and members of the board  
16 of directors are required to exercise: (a) If appointed by the  
17 declarant, the care required of fiduciaries of the unit owners; or (b)  
18 if elected by the unit owners, ordinary and reasonable care.

19       (2) The board of directors shall not act on behalf of the  
20 association to amend the declaration in any manner that requires the  
21 vote or approval of the unit owners pursuant to RCW 64.34.264, to  
22 terminate the condominium pursuant to RCW 64.34.268, or to elect  
23 members of the board of directors or determine the qualifications,  
24 powers, and duties, or terms of office of members of the board of  
25 directors pursuant to subsection ~~((6))~~ (7) of this section; but the  
26 board of directors may fill vacancies in its membership for the  
27 unexpired portion of any term.

28       (3) Within thirty days after adoption of any proposed budget for  
29 the condominium, the board of directors shall provide a summary of the  
30 budget to all the unit owners and shall set a date for a meeting of the  
31 unit owners to consider ratification of the budget not less than  
32 fourteen nor more than sixty days after mailing of the summary. Unless  
33 at that meeting the owners of units to which a majority of the votes in  
34 the association are allocated or any larger percentage specified in the  
35 declaration reject the budget, the budget is ratified, whether or not  
36 a quorum is present. In the event the proposed budget is rejected or

1 the required notice is not given, the periodic budget last ratified by  
2 the unit owners shall be continued until such time as the unit owners  
3 ratify a subsequent budget proposed by the board of directors.

4 (4) As part of the summary of the budget provided to all unit  
5 owners, the board of directors shall disclose to the unit owners:

6 (a) The current amount of regular assessments budgeted for  
7 contribution to the reserve account, the recommended contribution rate  
8 from the reserve study, and the funding plan upon which the recommended  
9 contribution rate is based;

10 (b) If additional regular or special assessments are scheduled to  
11 be imposed, the date the assessments are due, the amount of the  
12 assessments per each unit per month or year, and the purpose of the  
13 assessments;

14 (c) Based upon the most recent reserve study and other information,  
15 whether currently projected reserve account balances will be sufficient  
16 at the end of each year to meet the association's obligation for major  
17 maintenance, repair, or replacement of reserve components during the  
18 next thirty years;

19 (d) If reserve account balances are not projected to be sufficient,  
20 what additional assessments may be necessary to ensure that sufficient  
21 reserve account funds will be available each year during the next  
22 thirty years, the approximate dates assessments may be due, and the  
23 amount of the assessments per unit per month or year;

24 (e) The estimated amount recommended in the reserve account at the  
25 end of the current fiscal year based on the most recent reserve study,  
26 the projected reserve account cash balance at the end of the current  
27 fiscal year, and the percent funded at the date of the latest reserve  
28 study;

29 (f) The estimated amount recommended in the reserve account based  
30 upon the most recent reserve study at the end of each of the next five  
31 budget years, the projected reserve account cash balance in each of  
32 those years, and the projected percent funded for each of those years;  
33 and

34 (g) If the funding plan approved by the association is implemented,  
35 the projected reserve account cash balance in each of the next five  
36 budget years and the percent funded for each of those years.

37 (5)(a) Subject to subsection ((+5+)) (6) of this section, the  
38 declaration may provide for a period of declarant control of the



1 association, during which period a declarant, or persons designated by  
2 the declarant, may: (i) Appoint and remove the officers and members of  
3 the board of directors; or (ii) veto or approve a proposed action of  
4 the board or association. A declarant's failure to veto or approve  
5 such proposed action in writing within thirty days after receipt of  
6 written notice of the proposed action shall be deemed approval by the  
7 declarant.

8 (b) Regardless of the period provided in the declaration, a period  
9 of declarant control terminates no later than the earlier of: (i)  
10 Sixty days after conveyance of seventy-five percent of the units which  
11 may be created to unit owners other than a declarant; (ii) two years  
12 after the last conveyance or transfer of record of a unit except as  
13 security for a debt; (iii) two years after any development right to add  
14 new units was last exercised; or (iv) the date on which the declarant  
15 records an amendment to the declaration pursuant to which the declarant  
16 voluntarily surrenders the right to further appoint and remove officers  
17 and members of the board of directors. A declarant may voluntarily  
18 surrender the right to appoint and remove officers and members of the  
19 board of directors before termination of that period pursuant to (i),  
20 (ii), and (iii) of this subsection (~~((+4))~~) (5)(b), but in that event  
21 the declarant may require, for the duration of the period of declarant  
22 control, that specified actions of the association or board of  
23 directors, as described in a recorded instrument executed by the  
24 declarant, be approved by the declarant before they become effective.

25 (~~((+5))~~) (6) Not later than sixty days after conveyance of twenty-  
26 five percent of the units which may be created to unit owners other  
27 than a declarant, at least one member and not less than twenty-five  
28 percent of the members of the board of directors must be elected by  
29 unit owners other than the declarant. Not later than sixty days after  
30 conveyance of fifty percent of the units which may be created to unit  
31 owners other than a declarant, not less than thirty-three and one-third  
32 percent of the members of the board of directors must be elected by  
33 unit owners other than the declarant.

34 (~~((+6))~~) (7) Within thirty days after the termination of any period  
35 of declarant control, the unit owners shall elect a board of directors  
36 of at least three members, at least a majority of whom must be unit  
37 owners. The number of directors need not exceed the number of units

1 then in the condominium. The board of directors shall elect the  
2 officers. Such members of the board of directors and officers shall  
3 take office upon election.

4 ~~((7))~~ (8) Notwithstanding any provision of the declaration or  
5 bylaws to the contrary, the unit owners, by a two-thirds vote of the  
6 voting power in the association present and entitled to vote at any  
7 meeting of the unit owners at which a quorum is present, may remove any  
8 member of the board of directors with or without cause, other than a  
9 member appointed by the declarant. The declarant may not remove any  
10 member of the board of directors elected by the unit owners. Prior to  
11 the termination of the period of declarant control, the unit owners,  
12 other than the declarant, may remove by a two-thirds vote, any director  
13 elected by the unit owners.

14 **Sec. 3.** RCW 64.34.380 and 2008 c 115 s 1 are each amended to read  
15 as follows:

16 (1) An association is encouraged to establish a reserve account  
17 with a financial institution to fund major maintenance, repair, and  
18 replacement of common elements, including limited common elements that  
19 will require major maintenance, repair, or replacement within thirty  
20 years. ~~((A reserve account shall be established in the name of the  
21 association.))~~ If the association establishes a reserve account, the  
22 account must be in the name of the association. The board of directors  
23 is responsible for administering the reserve account.

24 (2) Unless doing so would impose an unreasonable hardship, an  
25 association with significant assets shall prepare and update a reserve  
26 study, in accordance with the association's governing documents and RCW  
27 64.34.224(1). The initial reserve study must be based upon a visual  
28 site inspection conducted by a reserve study professional.

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

33 (4) This section and RCW 64.34.382 through ~~((64.34.390))~~ 64.34.392  
34 apply to condominiums governed by chapter 64.32 RCW or this chapter and  
35 intended in whole or in part for residential purposes. These sections  
36 do not apply to condominiums consisting solely of units that are

1 restricted in the declaration to nonresidential use. An association's  
2 governing documents may contain stricter requirements.

3 **Sec. 4.** RCW 64.34.382 and 2008 c 115 s 2 are each amended to read  
4 as follows:

5 (1) A reserve study as described in RCW 64.34.380 is supplemental  
6 to the association's operating and maintenance budget. In preparing a  
7 reserve study, the association shall estimate the anticipated major  
8 maintenance, repair, and replacement costs, whose infrequent and  
9 significant nature make them impractical to be included in an annual  
10 budget.

11 (2) A reserve study (~~shall~~) must include:

12 (a) A reserve component list, including roofing, painting, paving,  
13 decks, siding, plumbing, windows, and any other reserve component that  
14 would cost more than one percent of the annual budget for major  
15 maintenance, repair, or replacement. If one of these reserve  
16 components is not included in the reserve study, the study should  
17 provide commentary explaining the basis for its exclusion. The study  
18 must also include quantities and estimates for the useful life of each  
19 reserve component, remaining useful life of each reserve component, and  
20 current repair and replacement cost for each component;

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

23 (c) The following level of reserve study performed:

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

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

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

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

28 (e) The percentage of the fully funded balance that the reserve  
29 account is funded;

30 (f) Special assessments already implemented or planned;

31 (g) Interest and inflation assumptions;

32 (h) Current reserve account contribution rate;

33 (i) A recommended reserve account contribution rate, a contribution  
34 rate for a full funding plan to achieve one hundred percent fully  
35 funded reserves by the end of the thirty-year study period, a baseline  
36 funding plan to maintain the reserve balance above zero throughout the

1 thirty-year study period without special assessments, and a  
2 contribution rate recommended by a reserve study professional;

3 (j) A projected reserve account balance for thirty years and a  
4 funding plan to pay for projected costs from those reserves without  
5 reliance on future unplanned special assessments; and

6 (k) A statement on whether the reserve study was prepared with the  
7 assistance of a reserve study professional.

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

9 "This reserve study should be reviewed carefully. It  
10 may not include all common and limited common element  
11 components that will require major maintenance, repair, or  
12 replacement in future years, and may not include regular  
13 contributions to a reserve account for the cost of such  
14 maintenance, repair, or replacement. The failure to include a  
15 component in a reserve study, or to provide contributions to a  
16 reserve account for a component, may, under some circumstances,  
17 require you to pay on demand as a special assessment your share  
18 of common expenses for the cost of major maintenance, repair,  
19 or replacement of a reserve component."

20 **Sec. 5.** RCW 64.34.384 and 2008 c 115 s 3 are each amended to read  
21 as follows:

22 An association may withdraw funds from its reserve account to pay  
23 for unforeseen or unbudgeted costs that are unrelated to maintenance,  
24 repair, or replacement of the reserve components. The board of  
25 directors shall record any such withdrawal in the minute books of the  
26 association, cause notice of any such withdrawal to be hand delivered  
27 or sent prepaid by first-class United States mail to the mailing  
28 address of each unit or to any other mailing address designated in  
29 writing by the unit owner, and adopt a repayment schedule not to exceed  
30 twenty-four months unless it determines that repayment within twenty-  
31 four months would impose an unreasonable burden on the unit owners.  
32 Payment for major maintenance, repair, or replacement of the reserve  
33 components out of cycle with the reserve study projections or not  
34 included in the reserve study may be made from the reserve account  
35 without meeting the notification or repayment requirements under this  
36 section.

1       **Sec. 6.** RCW 64.34.010 and 2008 c 115 s 7 and 2008 c 114 s 1 are  
2 each reenacted and amended to read as follows:

3       (1) This chapter applies to all condominiums created within this  
4 state after July 1, 1990. RCW 64.34.040 (separate titles and  
5 taxation), RCW 64.34.050 (applicability of local ordinances,  
6 regulations, and building codes), RCW 64.34.060 (condemnation), RCW  
7 64.34.208 (construction and validity of declaration and bylaws), RCW  
8 64.34.268 (1) through (7) and (10) (termination of condominium), RCW  
9 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and  
10 (k) through ~~((r))~~ (t) (powers of unit owners' association), RCW  
11 64.34.308(1) (board of directors and officers), RCW 64.34.340  
12 (voting-proxies), RCW 64.34.344 (tort and contract liability), RCW  
13 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common  
14 expenses-assessments), RCW 64.34.364 (lien for assessments), RCW  
15 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW  
16 64.34.455 (effect of violation on rights of action; attorney's fees),  
17 RCW 64.34.380 through ~~((34.34.390))~~ 64.34.392 (reserve studies and  
18 accounts), and RCW 64.34.020 (definitions) to the extent necessary in  
19 construing any of those sections, apply to all condominiums created in  
20 this state before July 1, 1990; but those sections apply only with  
21 respect to events and circumstances occurring after July 1, 1990, and  
22 do not invalidate or supersede existing, inconsistent provisions of the  
23 declaration, bylaws, or survey maps or plans of those condominiums.

24       (2) The provisions of chapter 64.32 RCW do not apply to  
25 condominiums created after July 1, 1990, and do not invalidate any  
26 amendment to the declaration, bylaws, and survey maps and plans of any  
27 condominium created before July 1, 1990, if the amendment would be  
28 permitted by this chapter. The amendment must be adopted in conformity  
29 with the procedures and requirements specified by those instruments and  
30 by chapter 64.32 RCW. If the amendment grants to any person any  
31 rights, powers, or privileges permitted by this chapter which are not  
32 otherwise provided for in the declaration or chapter 64.32 RCW, all  
33 correlative obligations, liabilities, and restrictions in this chapter  
34 also apply to that person.

35       (3) This chapter does not apply to condominiums or units located  
36 outside this state.

37       (4) RCW 64.34.400 (applicability-waiver), RCW 64.34.405 (liability  
38 for public offering statement requirements), RCW 64.34.410 (public

1 offering statement—general provisions), RCW 64.34.415 (public offering  
2 statement—conversion condominiums), RCW 64.34.420 (purchaser's right to  
3 cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion  
4 condominiums—notice—tenants(~~(relocation—assistance)~~))—relocation  
5 assistance), and RCW 64.34.455 (effect of violations on rights of  
6 action—attorney's fees) apply with respect to all sales of units  
7 pursuant to purchase agreements entered into after July 1, 1990, in  
8 condominiums created before July 1, 1990, in which as of July 1, 1990,  
9 the declarant or an affiliate of the declarant owns or had the right to  
10 create at least ten units constituting at least twenty percent of the  
11 units in the condominium.

12 **Sec. 7.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read  
13 as follows:

14 For purposes of this chapter:

15 (1) "Homeowners' association" or "association" means a corporation,  
16 unincorporated association, or other legal entity, each member of which  
17 is an owner of residential real property located within the  
18 association's jurisdiction, as described in the governing documents,  
19 and by virtue of membership or ownership of property is obligated to  
20 pay real property taxes, insurance premiums, maintenance costs, or for  
21 improvement of real property other than that which is owned by the  
22 member. "Homeowners' association" does not mean an association created  
23 under chapter 64.32 or 64.34 RCW.

24 (2) "Governing documents" means the articles of incorporation,  
25 bylaws, plat, declaration of covenants, conditions, and restrictions,  
26 rules and regulations of the association, or other written instrument  
27 by which the association has the authority to exercise any of the  
28 powers provided for in this chapter or to manage, maintain, or  
29 otherwise affect the property under its jurisdiction.

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

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

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

36 (6) "Residential real property" means any real property, the use of

1 which is limited by law, covenant or otherwise to primarily residential  
2 or recreational purposes.

3 (7) "Assessment" means all sums chargeable to an owner by an  
4 association in accordance with RCW 64.38.020.

5 (8) "Baseline funding plan" means establishing a reserve funding  
6 goal of maintaining a reserve account balance above zero dollars  
7 throughout the thirty-year study period described under section 9 of  
8 this act.

9 (9) "Contribution rate" means, in a reserve study as described in  
10 RCW 64.34.380, the amount contributed to the reserve account so that  
11 the association will have cash reserves to pay major maintenance,  
12 repair, or replacement costs without the need of a special assessment.

13 (10) "Effective age" means the difference between the estimated  
14 useful life and remaining useful life.

15 (11) "Full funding plan" means setting a reserve funding goal of  
16 achieving one hundred percent fully funded reserves by the end of the  
17 thirty-year study period described under section 9 of this act, in  
18 which the reserve account balance equals the sum of the deteriorated  
19 portion of all reserve components.

20 (12) "Fully funded balance" means the current value of the  
21 deteriorated portion, not the total replacement value, of all the  
22 reserve components. The fully funded balance for each reserve  
23 component is calculated by multiplying the current replacement cost of  
24 the reserve component by its effective age, then dividing the result by  
25 the reserve component's useful life. The sum total of all reserve  
26 components' fully funded balances is the association's fully funded  
27 balance.

28 (13) "Lot" means a physical portion of the real property located  
29 within an association's jurisdiction designated for separate ownership.

30 (14) "Owner" means the owner of a lot, but does not include a  
31 person who has an interest in a lot solely as security for an  
32 obligation. "Owner" also means the vendee, not the vendor, of a lot  
33 under a real estate contract.

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

37 (16) "Replacement cost" means the current cost of replacing,

1 repairing, or restoring a reserve component to its original functional  
2 condition.

3 (17) "Reserve component" means a common element whose cost of  
4 maintenance, repair, or replacement is infrequent, significant, and  
5 impractical to include in an annual budget.

6 (18) "Reserve study professional" means an independent person who  
7 is suitably qualified by knowledge, skill, experience, training, or  
8 education to prepare a reserve study in accordance with RCW 64.34.380  
9 and 64.34.382.

10 (19) "Significant assets" means that the current replacement value  
11 of the major reserve components is seventy-five percent or more of the  
12 gross budget of the association, excluding the association's reserve  
13 account funds.

14 (20) "Useful life" means the estimated time, between years, that  
15 major maintenance, repair, or replacement is estimated to occur.

16 **Sec. 8.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read  
17 as follows:

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

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

31 (3) Within thirty days after adoption by the board of directors of  
32 any proposed regular or special budget of the association, the board  
33 shall set a date for a meeting of the owners to consider ratification  
34 of the budget not less than fourteen nor more than sixty days after  
35 mailing of the summary. Unless at that meeting the owners of a  
36 majority of the votes in the association are allocated or any larger  
37 percentage specified in the governing documents reject the budget, in



1 person or by proxy, the budget is ratified, whether or not a quorum is  
2 present. In the event the proposed budget is rejected or the required  
3 notice is not given, the periodic budget last ratified by the owners  
4 shall be continued until such time as the owners ratify a subsequent  
5 budget proposed by the board of directors.

6 (4) As part of the summary of the budget provided to all owners,  
7 the board of directors shall disclose to the owners:

8 (a) The current amount of regular assessments budgeted for  
9 contribution to the reserve account, the recommended contribution rate  
10 from the reserve study, and the funding plan upon which the recommended  
11 contribution rate is based;

12 (b) If additional regular or special assessments are scheduled to  
13 be imposed, the date the assessments are due, the amount of the  
14 assessments per each owner per month or year, and the purpose of the  
15 assessments;

16 (c) Based upon the most recent reserve study and other information,  
17 whether currently projected reserve account balances will be sufficient  
18 at the end of each year to meet the association's obligation for major  
19 maintenance, repair, or replacement of reserve components during the  
20 next thirty years;

21 (d) If reserve account balances are not projected to be sufficient,  
22 what additional assessments may be necessary to ensure that sufficient  
23 reserve account funds will be available each year during the next  
24 thirty years, the approximate dates assessments may be due, and the  
25 amount of the assessments per owner per month or year;

26 (e) The estimated amount recommended in the reserve account at the  
27 end of the current fiscal year based on the most recent reserve study,  
28 the projected reserve account cash balance at the end of the current  
29 fiscal year, and the percent funded at the date of the latest reserve  
30 study;

31 (f) The estimated amount recommended in the reserve account based  
32 upon the most recent reserve study at the end of each of the next five  
33 budget years, the projected reserve account cash balance in each of  
34 those years, and the projected percent funded for each of those years;  
35 and

36 (g) If the funding plan approved by the association is implemented,  
37 the projected reserve account cash balance in each of the next five  
38 budget years and the percent funded for each of those years.

1           (5) 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. 9.** A new section is added to chapter 64.38 RCW  
6 to read as follows:

7           (1) An association is encouraged to establish a reserve account  
8 with a financial institution to fund major maintenance, repair, and  
9 replacement of common elements, including limited common elements that  
10 will require major maintenance, repair, or replacement within thirty  
11 years. If the association establishes a reserve account, the account  
12 must be in the name of the association. The board of directors is  
13 responsible for administering the reserve account.

14           (2) Unless doing so would impose an unreasonable hardship, an  
15 association with significant assets shall prepare and update a reserve  
16 study, in accordance with the association's governing documents and  
17 this chapter. The initial reserve study must be based upon a visual  
18 site inspection conducted by a reserve study professional.

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

23           (4) The decisions relating to the preparation and updating of a  
24 reserve study must be made by the board of directors in the exercise of  
25 the reasonable discretion of the board. The decisions must include  
26 whether a reserve study will be prepared or updated, and whether the  
27 assistance of a reserve study professional will be utilized.

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

30           (1) A reserve study as described in section 9 of this act is  
31 supplemental to the association's operating and maintenance budget. In  
32 preparing a reserve study, the association shall estimate the  
33 anticipated major maintenance, repair, and replacement costs, whose  
34 infrequent and significant nature make them impractical to be included  
35 in an annual budget.

36           (2) A reserve study must include:

1 (a) A reserve component list, including any reserve component that  
2 would cost more than one percent of the annual budget of the  
3 association, not including the reserve account, for major maintenance,  
4 repair, or replacement. If one of these reserve components is not  
5 included in the reserve study, the study should provide commentary  
6 explaining the basis for its exclusion. The study must also include  
7 quantities and estimates for the useful life of each reserve component,  
8 remaining useful life of each reserve component, and current major  
9 maintenance, repair, or replacement cost for each reserve component;

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

12 (c) The following 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; or

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 rates for a full funding  
22 plan and baseline funding plan;

23 (i) A recommended reserve account contribution rate, a contribution  
24 rate for a full funding plan to achieve one hundred percent fully  
25 funded reserves by the end of the thirty-year study period, a baseline  
26 funding plan to maintain the reserve balance above zero throughout the  
27 thirty-year study period without special assessments, and a  
28 contribution rate recommended by the reserve study professional;

29 (j) A projected reserve account balance for thirty years and a  
30 funding plan to pay for projected costs from that reserve account  
31 balance without reliance on future unplanned special assessments; and

32 (k) A statement on whether the reserve study was prepared with the  
33 assistance of a reserve study professional.

34 (3) A reserve study must also include the following disclosure:  
35 "This reserve study should be reviewed carefully. It may not include  
36 all common and limited common element components that will require  
37 major maintenance, repair, or replacement in future years, and may not  
38 include regular contributions to a reserve account for the cost of such

1 maintenance, repair, or replacement. The failure to include a  
2 component in a reserve study, or to provide contributions to a reserve  
3 account for a component, may, under some circumstances, require you to  
4 pay on demand as a special assessment your share of common expenses for  
5 the cost of major maintenance, repair, or replacement of a reserve  
6 component."

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

9 An association may withdraw funds from its reserve account to pay  
10 for unforeseen or unbudgeted costs that are unrelated to maintenance,  
11 repair, or replacement of the reserve components. The board of  
12 directors shall record any such withdrawal in the minute books of the  
13 association, cause notice of any such withdrawal to be hand delivered  
14 or sent prepaid by first-class United States mail to the mailing  
15 address of each owner or to any other mailing address designated in  
16 writing by the owner, and adopt a repayment schedule not to exceed  
17 twenty-four months unless it determines that repayment within twenty-  
18 four months would impose an unreasonable burden on the owners. Payment  
19 for major maintenance, repair, or replacement of the reserve components  
20 out of cycle with the reserve study projections or not included in the  
21 reserve study may be made from the reserve account without meeting the  
22 notification or repayment requirements under this section.

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

25 (1) When more than three years have passed since the date of the  
26 last reserve study prepared by a reserve study professional, the owners  
27 to which at least thirty-five percent of the votes are allocated may  
28 demand, in writing, to the association that the cost of a reserve study  
29 be included in the next budget and that the study be prepared by the  
30 end of that budget year. The written demand must refer to this  
31 section. The board of directors shall, upon receipt of the written  
32 demand, provide the owners who make the demand reasonable assurance  
33 that the board will include a reserve study in the next budget and, if  
34 the budget is not rejected by a majority of the owners, will arrange  
35 for the completion of a reserve study.

1 (2) If a written demand under this section is made and a reserve  
2 study is not timely prepared, a court may order specific performance  
3 and award reasonable attorneys' fees to the prevailing party in any  
4 legal action brought to enforce this section. An association may  
5 assert unreasonable hardship as an affirmative defense in any action  
6 brought against it under this section. Without limiting this  
7 affirmative defense, an unreasonable hardship exists where the cost of  
8 preparing a reserve study would exceed five percent of the  
9 association's annual budget.

10 (3) An owner's duty to pay for common expenses is not excused  
11 because of the association's failure to comply with this section or  
12 this chapter. A budget ratified by the owners is not invalidated  
13 because of the association's failure to comply with this section or  
14 this chapter.

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

17 Monetary damages or any other liability may not be awarded against  
18 or imposed upon the association, the officers or board of directors of  
19 the association, or those persons who may have provided advice or  
20 assistance to the association or its officers or directors, for failure  
21 to: Establish a reserve account; have a current reserve study prepared  
22 or updated in accordance with the requirements of this chapter; or make  
23 the reserve disclosures in accordance with this chapter.

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

26 An association is not required to follow the reserve study  
27 requirements under RCW 64.38.025 and sections 9 through 13 of this act  
28 if the cost of the reserve study exceeds five percent of the  
29 association's annual budget, the association does not have significant  
30 assets, or there are ten or fewer homes in the association.

31 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2012."

**ESHB 1309** - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

**ADOPTED 04/06/2011**

1           On page 1, line 2 of the title, after "associations;" strike the  
2 remainder of the title and insert "amending RCW 64.34.020, 64.34.308,  
3 64.34.380, 64.34.382, 64.34.384, 64.38.010, and 64.38.025; reenacting  
4 and amending RCW 64.34.010; adding new sections to chapter 64.38 RCW;  
5 and providing an effective date."

EFFECT:    The provisions of this bill do not apply to homeowners'  
associations with 10 or less homes. The effective date of the bill is  
changed from August 1, 2012, to January 1, 2012.

--- END ---