

Washington Uniform Common Interest Ownership Act (WUCIOA)

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**I. DEFINITIONS, APPLICABILITY, AND OTHER GENERAL PROVISIONS**

**SEC. 101. SHORT TITLE.**

This chapter may be known and cited as the Washington uniform common interest ownership act.

**SEC. 102. DEFINITIONS.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. For purposes of this subsection:

(a) A person controls a declarant if the person:

- (i) Is a general partner, managing member, officer, director, or employer of the declarant;
- (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the declarant;
- (iii) Controls in any manner the election or appointment of a majority of the directors, managing members, or general partners of the declarant; or
- (iv) Has contributed more than twenty percent of the capital of the declarant.

(b) A person is controlled by a declarant if the declarant:

- (i) Is a general partner, managing member, officer, director, or employer of the person;
- (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the person;
- (iii) Controls in any manner the election or appointment of a majority of the directors, managing members, or general partners of the person; or
- (iv) Has contributed more than twenty percent of the capital of the person.

(c) Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) “Allocated interests” means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability, the ownership interest, and votes in the association; and

(c) In a plat community and miscellaneous community, the common expense liability and the votes in the association, and also the undivided interest in the common elements if owned in common by the unit owners rather than an association.

(3) “Assessment” means all sums chargeable by the association against a unit, including any assessments levied pursuant to section 317 of this act, fines or fees levied or imposed by the association pursuant to this chapter or the governing documents, interest and late charges on any delinquent account, and all costs of collection incurred by the association in connection with the collection of a delinquent owner’s account, including reasonable attorneys’ fees.

(4) “Association” or “unit owners association” means the unit owners association organized under section 301 of this act and, to the extent necessary to construe sections of this chapter made applicable to common interest communities pursuant to section 117, 119, or 120 of this act, the association organized or created to administer such common interest communities.

- (5) “Ballot” means a record designed to cast or register a vote or consent in a form provided or accepted by the association.
- (6) “Board” means the body, regardless of name, designated in the declaration, map, or organizational documents, with primary authority to manage the affairs of the association.
- (7) “Common elements” means:
- (a) In a condominium or cooperative, all portions of the common interest community other than the units;
  - (b) In a plat community or miscellaneous community, any real estate other than a unit within a plat community or miscellaneous community that is owned or leased either by the association or in common by the unit owners rather than an association; and
  - (c) In all common interest communities, any other interests in real estate for the benefit of any unit owners that are subject to the declaration.
- (8) “Common expense” means any expense of the association, including allocations to reserves, allocated to all of the unit owners in accordance with common expense liability.
- (9) “Common expense liability” means the liability for common expenses allocated to each unit pursuant to section 208 of this act.
- (10) “Common interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. “Common interest community” does not include an arrangement described in section 123 or 124 of this act. A common interest community may be a part of another common interest community.
- (11) “Condominium” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
- (12) “Condominium notice” means the notice given to tenants pursuant to subsection (13)(c) of this section.
- (13)(a) “Conversion building” means a building:
- (i) That at any time before creation of the common interest community was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, who did not receive a condominium notice prior to entering into the rental agreement or lawfully taking occupancy, whichever event occurred first; or
  - (ii) That at any time within the twelve months preceding the first acceptance of an agreement with the declarant to convey, or the first conveyance of, any unit in the building, whichever event occurred first, to any person who was not a declarant or dealer,

or affiliate of a declarant or dealer, was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, who did not receive a condominium notice prior to entering into the rental agreement or lawfully taking occupancy, whichever event occurred first.

(b) A building in a common interest community is a conversion building only if:

(i) The building contains more than two attached dwelling units as defined in RCW 64.55.010(1); and

(ii) Acceptance of an agreement to convey, or conveyance of, any unit in the building to any person who was not a declarant or dealer, or affiliate of a declarant or dealer, did not occur prior to the effective date of this section.

(c) The notice referred to in (a)(i) and (ii) of this subsection must be in writing and must state: “The unit you will be occupying is, or may become, part of a common interest community and subject to sale.”

(14) “Convey” or “conveyance” means, with respect to a unit, any transfer of ownership of the unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold common interest community or a proprietary lease in a cooperative, a transfer by lease or assignment of the unit, but does not include the creation, transfer, or release of a security interest.

(15) “Cooperative” means a common interest community in which the real estate is owned by an association, each member of which is entitled by virtue of the member’s ownership interest in the association and by a proprietary lease to exclusive possession of a unit.

(16) “Dealer” means a person who, together with such person’s affiliates, owns or has a right to acquire either six or more units in a common interest community or fifty percent or more of the units in a common interest community containing more than two units.

(17) “Declarant” means:

(a) Any person who executes as declarant a declaration;

(b) Any person who reserves any special declarant right in a declaration;

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred of record. The holding or exercise of rights to maintain sales offices, signs advertising the common interest community, and models, and related right of access, does not confer the status of being a declarant; or

(d) Any person who is the owner of a fee interest in the real estate that is subjected to the declaration at the time of the recording of an instrument pursuant to section 306 of this act and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the common interest community created by the recording of the instrument.

(18) “Declarant control” means the right of the declarant or persons designated by the declarant to appoint or remove any officer or board member of the association or to veto or approve a proposed action of any board or association, pursuant to section 304(1)(a) of this act.

(19) “Declaration” means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

(20) “Development rights” means any right or combination of rights reserved by a declarant in the declaration to:

- (a) Add real estate or improvements to a common interest community;
- (b) Create units, common elements, or limited common elements within a common interest community;
- (c) Subdivide or combine units or convert units into common elements;
- (d) Withdraw real estate from a common interest community; or
- (e) Reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(21) “Effective age” means the difference between the useful life and remaining useful life.

(22) “Electronic transmission” or “electronically transmitted” means any electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.

(23) “Eligible mortgagee” means the holder of a security interest on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(24) “Foreclosure” means a statutory forfeiture or a judicial or nonjudicial foreclosure of a security interest or a deed or other conveyance in lieu of a security interest.

(25) “Full funding plan” means a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under section 331 of this act, in which the reserve account balance equals the sum of the estimated costs required to maintain, repair, or replace the deteriorated portions of all reserve components.

(26) “Fully funded balance” means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component’s useful life. The sum total of all reserve components’ fully funded balances is the association’s fully funded balance.

(27) “Governing documents” means the organizational documents, map, declaration, rules, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(28) “Identifying number” means a symbol or address that identifies only one unit or limited common element in a common interest community.

- (29) “Leasehold common interest community” means a common interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common interest community or reduce its size.
- (30) “Limited common element” means a portion of the common elements allocated by the declaration or by operation of section 203 (1)(b) or (2) of this act for the exclusive use of one or more, but fewer than all, of the unit owners.
- (31) “Map” means: (a) With respect to a plat community, the plat as defined in RCW 58.17.020 and complying with the requirements of Title 58 RCW, and (b) with respect to a condominium, cooperative, or miscellaneous community, a map prepared in accordance with the requirements of section 210 of this act.
- (32) “Master association” means an organization described in section 221 of this act, whether or not it is also an association described in section 301 of this act.
- (33) “Miscellaneous community” means a common interest community in which units are lawfully created in a manner not inconsistent with chapter 58.17 RCW and that is not a condominium, cooperative, or plat community.
- (34) “Nominal reserve costs” means that the current estimated total replacement costs of the reserve components are less than fifty percent of the annual budgeted expenses of the association, excluding contributions to the reserve fund, for a condominium or cooperative containing horizontal unit boundaries, and less than seventy-five percent of the annual budgeted expenses of the association, excluding contributions to the reserve fund, for all other common interest communities.
- (35) “Organizational documents” means the instruments filed with the secretary of state to create an entity and the instruments governing the internal affairs of the entity including, but not limited to, any articles of incorporation, certificate of formation, bylaws, and limited liability company or partnership agreement.
- (36) “Person” means an individual, corporation, business trust, estate, the trustee or beneficiary of a trust that is not a business trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal entity.
- (37) “Plat community” means a common interest community in which units have been created by subdivision or short subdivision as both are defined in RCW 58.17.020 and in which the boundaries of units are established pursuant to chapter 58.17 RCW.
- (38) “Proprietary lease” means a written and recordable lease that is executed and acknowledged by the association as lessor and that otherwise complies with requirements applicable to a residential lease of more than one year and pursuant to which a member is entitled to exclusive possession of a unit in a cooperative. A proprietary lease governed under this chapter is not subject to chapter 59.18 RCW except as provided in the declaration.
- (39) “Purchaser” means a person, other than a declarant or a dealer, which by means of a voluntary transfer acquires a legal or equitable interest in a unit other than as security for an obligation.

- (40) “Qualified financial institution” means a bank, savings association, or credit union whose deposits are insured by the federal government.
- (41) “Real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. “Real estate” includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.
- (42) “Real estate contract” has the same meaning as defined in 12 RCW 61.30.010.
- (43) “Record,” when used as a noun, means information inscribed on a tangible medium or contained in an electronic transmission.
- (44) “Remaining useful life” means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.
- (45) “Replacement cost” means the estimated total cost to maintain, repair, or replace a reserve component to its original functional condition.
- (46) “Reserve component” means a physical component of the common interest community which the association is obligated to maintain, repair, or replace, which has an estimated useful life of less than thirty years, and for which the cost of such maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.
- (47) “Reserve study professional” means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with sections 330 and 331 of this act. For the purposes of this subsection, “independent” means a person who is not an employee, officer, or director, and has no pecuniary interest in the declarant, association, or any other party for whom the reserve study is prepared.
- (48) “Residential purposes” means use for dwelling or recreational purposes, or both.
- (49) “Rule” means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, that is not set forth in the declaration or organizational documents and governs the conduct of persons or the use or appearance of property.
- (50) “Security interest” means an interest in real estate or personal property, created by contract or conveyance that secures payment or performance of an obligation. “Security interest” includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.
- (51) “Special declarant rights” means rights reserved for the benefit of a declarant to:
- (a) Complete any improvements indicated on the map or described in the declaration or the public offering statement pursuant to section 403(1)(h) of this act;
  - (b) Exercise any development right;
  - (c) Maintain sales offices, management offices, signs advertising the common interest community, and models;

(d) Use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community;

(e) Make the common interest community subject to a master association;

(f) Merge or consolidate a common interest community with another common interest community of the same form of ownership;

(g) Appoint or remove any officer or board member of the association or any master association or to veto or approve a proposed action of any board or association, pursuant to section 304(1) of this act;

(h) Control any construction, design review, or aesthetic standards committee or process;

(i) Attend meetings of the unit owners and, except during an executive session, the board;

(j) Have access to the records of the association to the same extent as a unit owner.

(52) “Specially allocated expense” means any expense of the association, including allocations to reserves, allocated to some or all of the unit owners pursuant to section 317 (4) through (8) of this act.

(53) “Survey” has the same meaning as defined in RCW 58.09.020.

(54) “Tangible medium” means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

(55) “Timeshare” has the same meaning as defined in RCW 5 64.36.010.

(56) “Transition meeting” means the meeting held pursuant to section 304(4) of this act.

(57)(a) “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 206(1)(d) of this act.

(b) If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association’s interest in that unit is not affected.

(c) Except as provided in the declaration, a mobile home or manufactured home for which title has been eliminated pursuant to chapter 65.20 RCW is part of the unit described in the title elimination documents.

(58)(a) “Unit owner” means (i) a declarant or other person that owns a unit or (ii) a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation.

(b) “Unit owner” also means the vendee, not the vendor, of a unit under a recorded real estate contract.

(c) In a condominium, plat community, or miscellaneous community, the declarant is the unit owner of any unit created by the declaration. In a cooperative, the declarant is treated as the unit owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

(59) “Useful life” means the estimated time during which a reserve component is expected to perform its intended function without major maintenance, repair, or replacement.

(60) “Writing” does not include an electronic transmission.

(61) “Written” means embodied in a tangible medium.

#### **SEC. 103. NO VARIATION BY AGREEMENT.**

Except as expressly provided in this chapter, the effect of the provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. Except as provided otherwise in section 123 of this act, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

#### **SEC. 104. SEPARATE TITLES AND TAXATION.**

(1) In a cooperative, unless the declaration provides that a unit owner’s interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property.

(2) In a condominium, plat community, or miscellaneous community, if there is any unit owner other than a declarant:

(a) Each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate; and

(b) Each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right constitutes a separate parcel of real estate for property tax purposes and must be separately taxed and assessed to the declarant, and the declarant alone is liable for payment of those taxes.

(4) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

#### **SEC. 105. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.**

(1) A building, fire, health, or safety statute, ordinance, or regulation may not impose any requirement upon any structure in a common interest community that it would not impose upon a physically identical development under a different form of ownership.

(2) A zoning, subdivision, or other land use statute, ordinance, or regulation may not prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative that it would not impose upon a physically identical development under a different form of ownership.

(3) Chapter 58.17 RCW does not apply to the creation of a condominium or a cooperative. This chapter must not be construed to permit the creation of a condominium or cooperative on a lot, tract, or parcel of land that could not be sold or transferred without violating chapter 58.17 RCW.

(4) Except as provided in subsections (1), (2), and (3) of this section, this chapter does not invalidate or modify any provision of any building, zoning, subdivision, or other statute, ordinance, rule, or regulation governing the use of real estate.

(5) This section does not prohibit a county legislative authority from requiring the review and approval of declarations and amendments to declarations and of termination agreements executed pursuant to section 219(2) of this act by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor must be done in a reasonable and timely manner.

#### **SEC. 106. EMINENT DOMAIN.**

(1) If a unit is acquired by condemnation or part of a unit is acquired by condemnation leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association must promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree provides otherwise:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3)(a) If part of the common elements is acquired by condemnation, the portion of the award attributable to the common elements taken must be paid to the association. A court may award damages to a unit owner or owners for particular damage to the owner's units arising from condemnation.

(b) Unless the declaration or the decree provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The decree must be recorded in every county in which any portion of the common interest community is located.

**SEC. 107. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.**

The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state and unincorporated associations, the law of real estate, and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement this chapter, except to the extent inconsistent with this chapter.

**SEC. 108. CONSTRUCTION AGAINST IMPLICIT REPEAL.**

This chapter is intended as a unified coverage of its subject matter and no part of it must be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**SEC. 109. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**SEC. 110. SEVERABILITY.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**SEC. 111. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.**

(1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

- (a) The commercial setting of the negotiations;
- (b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;
- (c) The effect and purpose of the contract or clause; and
- (d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

**SEC. 112. OBLIGATION OF GOOD FAITH.**

Every contract or duty governed under this chapter imposes an obligation of good faith in its performance or enforcement.

**SEC. 113. REMEDIES TO BE LIBERALLY ADMINISTERED.**

The remedies provided under this chapter must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

**SEC. 114. ADJUSTMENT OF DOLLAR AMOUNTS.**

(1) From time to time the dollar amount specified in sections 116 and 409(2) of this act must change, as provided in subsections (2) and (3) of this section, according to and to the extent of changes in the consumer price index for urban wage earners and clerical workers: U.S. city average, all items 1967 = 100, compiled by the bureau of labor statistics, United States department of labor, (the “index”). The index for December 1979, which was 230, is the reference base index.

(2) The dollar amounts specified in sections 116 and 409(2) of this act and any amount stated in the declaration pursuant to sections 116 and 409(2) of this act must change on July 1st of each year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index, is ten percent or more, but:

(a) The portion of the percentage change in the index in excess of a multiple of ten percent must be disregarded and the dollar amount may only change in multiples of ten percent of the amount appearing in this chapter on the effective date of this section; (b) the dollar amount must not change if the amount required under this section is that currently in effect pursuant to this chapter as a result of earlier application of this section; and (c) the dollar amount must not be reduced below the amount appearing in this chapter on the effective date of this section.

(3) If the index is revised after December 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised index. If the revision of the index changes the reference base index, a revised reference base index must be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the bureau of labor statistics. If the index is superseded, the index referred to in this section is the one represented by the bureau of labor statistics as reflecting most accurately the changes in the purchasing power of the dollar for consumers.

**SEC. 115. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

**SEC. 116. APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES.**

(1) Except as provided otherwise in this section, this chapter applies to all common interest communities created within this state after the effective date of this section. Chapters 59.18,

64.32, 64.34, and 64.38 RCW do not apply to common interest communities created after the effective date of this section.

(2) Unless the declaration provides that this entire chapter is applicable, a plat community or miscellaneous community that is not subject to any development right is subject only to sections 104, 105, and 106 of this act, if the community: (a) Contains no more than twelve units; and (b) provides in its declaration that the annual average assessment of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed three hundred dollars, as adjusted pursuant to section 114 of this act.

(3) The exemption provided in subsection (2) of this section applies only if:

(a) The declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the association for the community; and

(b) The declaration provides that the assessment may not be increased above the limitation in subsection (2) of this section prior to the transition meeting without the consent of unit owners, other than the declarant, holding ninety percent of the votes in the association.

**SEC. 117. APPLICABILITY TO PREEXISTING COMMON INTEREST COMMUNITIES.**

(1) Except for a nonresidential common interest community described in section 121 of this act, sections 120 and 326 of this act apply, and any inconsistent provisions of chapter 59.18, 64.32, 64.34, or 64.38 RCW do not apply, to a common interest community created in this state before the effective date of this section.

(2) Except to the extent provided in this subsection, the sections listed in subsection (1) of this section apply only to events and circumstances occurring after the effective date of this section and do not invalidate existing provisions of the governing documents of those common interest communities. To protect the public interest, sections 120 and 326 of this act supersede existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter 64.38 RCW.

**SEC. 118. APPLICABILITY OF AMENDMENTS TO NEW COMMON INTEREST COMMUNITIES.**

Amendments to this chapter apply to all common interest communities except those that (1) were created prior to the effective date of this section and (2) have not subsequently amended their governing documents to provide that this chapter will apply to the common interest community pursuant to section 120 of this act.

**SEC. 119. APPLICABILITY OF PRIOR CONDOMINIUM STATUTES.**

Chapter 64.32 RCW does not apply to condominiums created after July 1, 1990, and chapter 64.34 RCW does not apply to condominiums created after the effective date of this section.

**SEC. 120. ELECTION OF PREEXISTING COMMON INTEREST COMMUNITIES TO BE GOVERNED BY THIS CHAPTER.**

(1) The declaration of any common interest community created before the effective date of this section may be amended to provide that this chapter will apply to the common interest community, regardless of what applicable law provided before this act was adopted.

(2) Except as provided otherwise in subsection (3) of this section or in section 218 (9), (10), or (11) of this act, an amendment to the governing documents authorized under this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments and in conformity with the amendment procedures of this chapter. If the governing documents do not contain provisions authorizing amendment, the amendment procedures of this chapter apply. If an amendment grants to a person a right, power, or privilege permitted under this chapter, any correlative obligation, liability, or restriction in this chapter also applies to the person.

(3) Notwithstanding any provision in the governing documents of a common interest community that govern the procedures and requirements for amending the governing documents, an amendment under subsection (1) of this section may be made as follows:

(a) The board shall propose such amendment to the owners if the board deems it appropriate or if owners holding twenty percent or more of the votes in the association request such an amendment in writing to the board;

(b) Upon satisfaction of the foregoing requirements, the board shall prepare a proposed amendment and shall provide the owners with a notice in a record containing the proposed amendment and at least thirty days' advance notice of a meeting to discuss the proposed amendment;

(c) Following such meeting, the board shall provide the owners with a notice in a record containing the proposed amendment and a ballot to approve or reject the amendment;

(d) The amendment shall be deemed approved if owners holding at least thirty percent of the votes in the association participate in the voting process, and at least sixty-seven percent of the votes cast by participating owners are in favor of the proposed amendment.

**SEC. 121. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE COMMON INTEREST COMMUNITIES.**

(1) A plat community, miscellaneous community, or cooperative in which all the units are restricted exclusively to nonresidential use is not subject to this chapter except to the extent the declaration provides that:

(a) This entire chapter applies to the community;

(b) Sections 101 through 226 of this act apply to the community; or

(c) Only sections 104, 105, and 106 of this act apply to the community.

(2) A condominium in which all the units are restricted exclusively to nonresidential use is subject to this chapter, but the declaration may provide that only sections 101 through 226 of this act apply to the community.

(3) If this entire chapter applies to a common interest community in which all the units are restricted exclusively to nonresidential use, the declaration may also require, subject to section 111 of this act, that:

(a) Any management, maintenance, operations, or employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a

declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(4) A common interest community that contains both units restricted to nonresidential purposes and units that may be used for residential purposes is not subject to this chapter unless the units that may be used for residential purposes would comprise a common interest community subject to this chapter in the absence of such nonresidential units or the declaration provides that this chapter applies as provided in subsection (2) or (3) of this section.

#### **SEC. 122. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES.**

This chapter does not apply to a common interest community located outside this state.

#### **SEC. 123. OTHER EXEMPT REAL ESTATE ARRANGEMENTS.**

(1) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(2) An arrangement between an association for a common interest community and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, costs payable by the common interest community as a result of the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required under this chapter.

(3) Except for a cooperative, a lease in which the tenant is obligated to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in an arrangement does not create a separate common interest community.

#### **SEC. 124. OTHER EXEMPT COVENANTS.**

An easement or covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community.

## **II. CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES**

### **SEC. 201. CREATION OF COMMON INTEREST COMMUNITIES.**

(1)(a) A common interest community may be created under this chapter only by (i) recording a declaration executed in the same manner as a deed, and (ii) recording a map pursuant to section 210(3) of this act, and (iii) with respect to a cooperative, conveying the real estate subject to that declaration to the association.

(b) The declaration and map must be recorded in every county in which any portion of the common interest community is located. The name of a condominium must not be identical to

the name of any other existing condominium or plat community, whether created under this chapter or chapter 64.32 or 64.34 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a common interest community other than a plat community may not be recorded unless a certification required under section 210(6) (a) or (b) of this act regarding the map is also recorded.

(3)(a) Except as provided otherwise in the declaration or map, if, in a common interest community other than a condominium or cooperative, real estate described as a common element in the declaration or map is not conveyed to the association or expressly dedicated in the declaration or map to the unit owners as tenants in common, that real estate is deemed to be conveyed to the association at the time the first unit is conveyed, subject to the authority and jurisdiction of the association and subject to development rights, if any, reserved in the declaration.

(b) Except as provided otherwise in the declaration or map, in the event of the dissolution of an association, any real estate owned by the association vests in the unit owners as tenants in common with each unit owner's interest being determined in accordance with the provisions of section 219 of this act regarding a termination of the common interest community.

#### **SEC. 202. RESERVATION OF NAME.**

Upon the filing of a written request with the county office in which the declaration is to be recorded, using a form of written request as may be required by the county office and paying a fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The reserved name must not be identical to any other condominium or plat community located in that county. The name reservation expires unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request.

#### **SEC. 203. UNIT BOUNDARIES.**

(1) Except as provided by the declaration or, in the case of a plat community or miscellaneous community, by the map:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(2) Subject to subsection (1)(b) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(3) Any fireplaces, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

#### **SEC. 204. CONSTRUCTION AND VALIDITY OF GOVERNING DOCUMENTS.**

(1) All provisions of the governing documents are severable. If any provision of a governing document, or its application to any person or circumstances, is held invalid, the remainder of the governing document or application to other persons or circumstances is not affected.

(2) The rule against perpetuities may not be applied to defeat any provision of the governing documents adopted pursuant to section 302(1)(a) of this act.

(3) If a conflict exists between the declaration and the organizational documents, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4)(a) The creation of a common interest community must not be impaired and title to a unit and any common elements must not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the governing documents, or any amendment to the governing documents, to comply with this chapter.

(b) This chapter does not determine whether a significant failure impairs marketability. Any unit owner, record owner of a security interest in any portion of the common interest community, or the association has standing to obtain a court order compelling the recordation of a declaration or map or adoption of organizational documents, or any appropriate amendment thereto, or to any other governing document, necessary to comply with the requirements of this chapter and to effectuate the reasonably ascertainable intent of the parties, including the intent to create a common interest community in compliance with this chapter. The failure to (i) include in the declaration or any amendment to the declaration cross-references by recording number to the map or any amendment to the map, or (ii) include in the map or any amendment to the map cross-references by recording number to the declaration or any amendment to the declaration is deemed an insignificant failure to comply with this chapter.

#### **SEC. 205. DESCRIPTION OF UNITS.**

(1) In a condominium or a cooperative, a description of a unit that sets forth the name of the common interest community, the recording data for the declaration, the county and state in which the common interest community is located, and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit that were created by the governing documents.

(2) In a plat community or miscellaneous community, a description of a unit that sets forth the name of the common interest community, the recording data for the map, the county and state in which the common interest community is located, and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit.

#### **SEC. 206. CONTENTS OF DECLARATION.**

(1) The declaration must contain:

- (a) The names of the common interest community and the association and, immediately following the initial recital of the name of the community, a statement that the common interest community is a condominium, cooperative, plat community, or miscellaneous community;
- (b) A legal description of the real estate included in the common interest community;
- (c) A statement of the number of units that the declarant has created and, if the declarant has reserved the right to create additional units, the maximum number of such additional units;
- (d) In all common interest communities, a reference to the recorded map creating the units and common elements, if any, subject to the declaration, and in a common interest community other than a plat community, the identifying number of each unit created by the declaration, a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in section 203(1)(a) of this act, and with respect to each existing unit, and if known at the time the declaration is recorded, the (i) approximate square footage, (ii) number of whole or partial bathrooms, (iii) number of rooms designated primarily as bedrooms, and (iv) level or levels on which each unit is located. The data described in this subsection (1)(d)(ii) and (iii) may be omitted with respect to units restricted to nonresidential use;
- (e) A description of any limited common elements, other than those specified in section 203 (1)(b) and (2) of this act;
- (f) A description of any real estate that may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in section 203 (1)(b) and (2) of this act, together with a statement that they may be so allocated;
- (g) A description of any development right and any other special declarant rights reserved by the declarant, and, if the boundaries of the real estate subject to those rights are fixed in the declaration pursuant to (h)(i) of this subsection, a description of the real property affected by those rights, and a time limit within which each of those rights must be exercised;
- (h) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
  - (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and
  - (ii) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
- (i) Any other conditions or limitations under which the rights described in (g) of this subsection may be exercised or will lapse;
- (j) An allocation to each unit of the allocated interests in the manner described in section 208 of this act;

(k) Any restrictions on alienation of the units, including any restrictions on leasing that exceed the restrictions on leasing units that boards may impose pursuant to section 323(9)(c) of this act and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(l) A cross-reference by recording number to the map for the units created by the declaration;

(m) Any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in section 322 of this act;

(n) All matters required under sections 207, 208, 209, 216, 217, and 303 of this act.

(2) All amendments to the declaration must contain a cross- reference by recording number to the declaration and to any prior amendments to the declaration. All amendments to the declaration adding units must contain a cross-reference by recording number to the map relating to the added units and set forth all information required under subsection (1) of this section with respect to the added units.

(3) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

#### **SEC. 207. LEASEHOLD COMMON INTEREST COMMUNITIES.**

(1) Any lease the expiration or termination of which may terminate the common interest community or reduce its size, or a memorandum of the lease, must be recorded. Every lessor of these leases in a condominium, plat community, or miscellaneous community must sign the declaration. The declaration must state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real estate subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner in which those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable or stated time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) After the declaration for a condominium, miscellaneous community, or plat community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold

interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium, miscellaneous community, or plat community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner of the reversion or remainder records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with section 106(1) of this act as though those units had been taken by condemnation. Reallocations must be confirmed by an amendment to the declaration and map prepared, executed, and recorded by the association.

#### **SEC. 208. ALLOCATION OF ALLOCATED INTERESTS.**

(1) The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association;

(b) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(c) In a plat community and miscellaneous community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

(2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(3) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(4)(a) The declaration may provide:

(i) That different allocations of votes are made to the units on particular matters specified in the declaration;

(ii) For cumulative voting only for the purpose of electing board members; and

(iii) For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(b) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants under this chapter, and units do not constitute a class because they are owned by a declarant.

(5) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any

time to all the units must each equal one if stated as a fraction or one hundred percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(6)(a) In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

(b) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

#### **SEC. 209. LIMITED COMMON ELEMENTS.**

(1)(a) Except for the limited common elements described in section 203 (1)(b) and (3) of this act, the declaration must specify to which unit or units each limited common element is allocated.

(b) An allocation of a limited common element may not be altered without the consent of the owners of the units from which and to which the limited common element is allocated.

(2)(a) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may be reallocated between units only with the approval of the board and by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made.

(b) The board must approve the request of the unit owner or owners under this subsection (2) within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board to act upon a request within such period is deemed an approval of the request.

(c) The amendment must be executed and recorded by the association and be recorded in the name of the common interest community.

(3) Unless provided otherwise in the declaration, the unit owners of units to which at least sixty-seven percent of the votes are allocated, including the unit owner of the unit to which the common element or limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation must be reflected in an amendment to the declaration and the map.

#### **SEC. 210. MAPS.**

(1) A map is required for all common interest communities. For purposes of this chapter, a map must be construed as part of the declaration.

(2) With the exception of subsections (1), (3), (4), and (14) of this section, this section does not apply to a plat as defined in RCW 17 58.17.020.

(3) The map for a common interest community must be executed by the declarant and recorded concurrently with, and contain cross-references by recording number to, the declaration.

(4) An amendment to a map for a common interest community must be executed by the same party or parties authorized or required to execute an amendment to the declaration, contain cross-references by recording number to the declaration and any amendments to the declaration, and be recorded concurrently with an amendment to the declaration. With respect to a plat community, (a) any amendment to the map must be prepared and recorded in compliance with the requirements, processes, and procedures in chapter 58.17 RCW and of the local subdivision ordinances of the city, town, or county in which the plat community is located, and (b) any amendment to the declaration must conform to the map as so approved and recorded.

(5) A map for a cooperative may be prepared by a licensed land surveyor, and may be incorporated into the declaration to satisfy subsection (3) of this section and section 206(1)(d) of this act. If the map for a cooperative is not prepared by a licensed land surveyor, the map need not contain the certification required in subsection (6)(a) of this section.

(6) The map for a common interest community must be clear and legible and must contain:

(a) If the map is a survey, a certification by a licensed land surveyor in substantially the following form:

**SURVEYOR CERTIFICATE:** This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of ..... (name of party requesting the survey) on ..... (date). I hereby certify that this map for ..... (name of common interest community) is based upon an actual survey of the property herein described; that the bearings and distances are correctly shown; that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein; and that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map. (Surveyor's name, signature, license or certificate number, and acknowledgment)

(b) If the map is not a survey, a certification in substantially the following form:

**DECLARANT CERTIFICATE:** I hereby certify on behalf of ..... (declarant) that this map for ..... (name of common interest community) was made by me or under my direction in conformance with the requirements of RCW ..... (this section); that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein; and that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map. (Declarant's name, signature, and acknowledgment)

(c) A declaration by the declarant in substantially the following form:

**DECLARANT DECLARATION:** The undersigned owner or owners of the interest in the real estate described herein hereby declare this map and dedicate the same for a common interest community named ..... (name of common interest community), a ..... (type of community), as that term is defined in the Washington Uniform Common Interest

Ownership Act, solely to meet the requirements of the Washington Uniform Common Interest Ownership Act and not for any public purpose. This map and any portion thereof is restricted by law and the Declaration for ..... (name of common interest community), recorded under (name of county in which the common interest community is located) County Recording No. .... (recording number). (Declarant's name, signature, and acknowledgment)

(7) Each map filed for a common interest community, and any amendments to the map, must be in the style, size, form, and quality as prescribed by the recording authority of the county where filed, and a copy must be delivered to the county assessor.

(8) Each map prepared for a common interest community in compliance with this chapter, and any amendments to the map, must show or state:

(a) The name of the common interest community and, immediately following the name of the community, a statement that the common interest community is a condominium, cooperative, or miscellaneous community as defined in this chapter. A local jurisdiction may also require that the name of a plat community on the survey, plat, or map be followed by a statement that the common interest community is a plat community as defined in this chapter;

(b) A legal description of the land in the common interest community;

(c) As to a condominium, a survey of the land in the condominium, and as to a cooperative, a survey or a drawing of the land included in the entire cooperative that complies with the other requirements of this section;

(d) If the boundaries of land subject to the development right to withdraw are fixed in the declaration or an amendment to the declaration pursuant to section 206(1)(h)(i) of this act, and subject to the provisions of the declaration, an amendment to the map if not contained in the initial recorded map, the legal description and boundaries of that land, labeled "MAY BE WITHDRAWN FROM THE [COMMON INTEREST COMMUNITY];

(e) If the boundaries of land subject to the development right to add units that will result in the reallocation of allocated interests is fixed in the declaration or an amendment to the declaration pursuant to section 206(1)(h)(i) of this act, and subject to the provisions of the declaration, the legal description and boundaries of that land, labeled "SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS";

(f) The location and dimensions of all existing buildings containing or comprising units;

(g) The extent of any encroachments by or upon any portion of the common interest community;

(h) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the common interest community and any unrecorded easements of which a surveyor or declarant knows or reasonably should have known;

(i) The location and dimensions of vertical unit boundaries;

(j) The location with reference to an established datum of horizontal unit boundaries. With respect to a cooperative, miscellaneous community, or condominium for which the horizontal

boundaries are not defined by physical monuments, reference to an established datum is not required if the location of the horizontal boundaries of a unit is otherwise reasonably described or depicted;

(k) The legal description and the location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as “LEASEHOLD REAL ESTATE”;

(l) The distance between any noncontiguous parcels of real estate comprising the common interest community;

(m) The general location of any existing principal common amenities listed in a public offering statement under section 403(1)(k) of this act;

(n) The general location of porches, decks, balconies, patios, storage facilities, moorage spaces, or parking spaces that are allocated as limited common elements, and any applicable identifying number or designation; and

(o) As to any survey, all other matters customarily shown on land surveys.

(9) The map for a common interest community may also show the anticipated approximate location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community, and any contemplated improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT.”

(10) The map for a common interest community must identify any unit in which the declarant has reserved the right to create additional units or common elements under section 211(3) of this act.

(11) Unless the declaration provides otherwise, any horizontal boundary of part of a unit located outside a building has the same elevation as the horizontal boundary of the inside part and need not be depicted on the map.

(12) Upon exercising any development right, the declarant must record either new maps necessary to conform to the requirements of subsections (3), (4), (6), and (8) of this section, or new certifications of any map previously recorded if that map otherwise conforms to the requirements of subsections (3), (4), (6), and (8) of this section.

(13) Any survey and the surveyor certifications required under this section must be made by a licensed surveyor.

(14) As to a plat community, the information required under subsections (6) (a) and (c), (8) (d) through (g), (k), (m), and (n), (9), and (10) of this section is required, but may be shown on a map incorporated in or attached to the declaration, and need not be shown on the plat community map. Any such map is deemed a map for purposes of applying the provisions of this section, and the declarant must provide the certification required under subsection (6)(b) of this section.

(15) In showing or projecting the location and dimensions of the vertical boundaries of a unit located in a building, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the

map under subsection (8)(f) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building.

#### **SEC. 211. EXERCISE OF DEVELOPMENT RIGHTS.**

(1) To exercise any development right reserved under section 206(1)(h) of this act, the declarant must prepare, execute, and record any amendments to the declaration and map in accordance with the requirements of sections 210 and 218(3) of this act. The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision, combination, or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required under section 209 of this act. The amendments are effective upon recording.

(2) Development rights may be reserved within any real estate added to the common interest community if the amendment to the declaration adding that real estate includes all matters required under sections 206 and 207 of this act and the amendment to the map includes all matters required under section 210 of this act. This subsection does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 206(1)(h) of this act.

(3) When a declarant exercises a development right to subdivide, combine, or convert a unit previously created into additional units or common elements, or both:

(a) If the declarant converts the unit entirely into common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under section 106 of this act; or

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 206(1)(h) of this act, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration or map or amendment to the declaration or map does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn if a unit in that real estate has been conveyed to a purchaser; or

(b) If any portion of the real estate is subject to withdrawal as described in the declaration or map or amendment to the declaration or map, none of that portion of the real estate may be withdrawn if a unit in that portion has been conveyed to a purchaser.

(5) If the declarant combines two or more units into a lesser number of units, whether or not any part of a unit is converted into common elements or common elements are converted units, the amendment to the declaration must reallocate all of the allocated interests of the units being

combined into the unit or units created by the combination in any reasonable manner prescribed by the declarant.

(6) A unit conveyed to a purchaser may not be withdrawn pursuant to subsection (4)(a) or (b) of this section without the consent of the unit owner of that unit and the holder of a security interest in the unit.

#### **SEC. 212. ALTERATIONS OF COMMON ELEMENTS AND UNITS.**

Subject to the provisions of the governing documents and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the unit owner's unit that do not impair the structural integrity or mechanical or electrical systems or lessen the support of any portion of the common interest community;

(2) May not change the appearance of the common elements without approval of the board;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, with approval of the board, may remove or alter any intervening partition or create apertures in the unit or adjoining unit, even if the partition in whole or in part is a common element. The removal of partitions or creation of apertures under this subsection is not an alteration of boundaries. The board must approve a unit owner's request, which must include the plans and specifications for the proposed removal or alteration, under this subsection (3) after receipt of all required information unless the proposed alteration does not comply with this section or the governing documents; and

(4) May eliminate the title to a mobile home or manufactured home within the unit as permitted under chapter 65.20 RCW without the consent or joinder by the association, any other unit owner, or any party having a security interest in any other unit or the common elements.

#### **SEC. 213. RELOCATION OF UNIT BOUNDARIES.**

(1) Subject to the provisions of the declaration, section 212 of this act, and other provisions of law, the boundaries between adjoining units may be relocated upon application to the board by the unit owners of those units and upon approval by the board pursuant to this section. The application must include plans showing the relocated boundaries and such other information as the board may require. If the unit owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the declaration, section 212 of this act, or other provisions of law, the board must approve the application and prepare any amendments to the declaration and map in accordance with the requirements of subsection (3) of this section.

(2)(a) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the unit owner of the unit who proposes to relocate a boundary. The amendment may be approved only if the unit owner of the unit, the boundary of which is being relocated, and, unless the declaration provides otherwise, persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by the declarant, agree.

(b) The association may require payment to the association of a one-time fee or charge or continuing fees or charges payable by the unit owners of the units whose boundaries are being relocated to include common elements.

(3)(a) The association must prepare any amendment to the declaration in accordance with the requirements of section 206 of this act and any amendment to the map in accordance with the requirements of section 210 of this act necessary to show or describe the altered boundaries of affected units and their dimensions and identifying numbers.

(b) The amendment to the declaration must be executed by the unit owner of the unit, the boundaries of which are being relocated, and by the association, contain words of conveyance between them, and be recorded in the names of the unit owner or owners and the association, as grantor or grantee, as appropriate and as required under section 218(3) of this act. The amendments are effective upon recording.

(4) All costs, including reasonable attorneys' fees, incurred by the association for preparing and recording amendments to the declaration and map under this section must be assessed to the unit, the boundaries of which are being relocated.

#### **SEC. 214. SUBDIVISION AND COMBINATION OF UNITS.**

(1) Unless prohibited in the declaration, subject to the provisions of the declaration, section 212 of this act, and other provisions of law, a unit may be subdivided into two or more units upon application to the association by the unit owner of the unit and upon approval by the board pursuant to this section. The application must include plans showing the relocated boundaries, a reallocation of all the allocated interests of the units among the units created by the subdivision, and such other information as the board may require. Unless the board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the declaration, sections 209 and 212 of this act, or other provisions of law, the board must approve the application and prepare any amendments to the declaration and map in accordance with the requirements of subsection (4) of this section.

(2) Unless prohibited in the declaration, subject to the provisions of the declaration, section 212 of this act, and other provisions of law, two or more units may be combined into a lesser number of units upon application to the association by the owners of those units and upon approval by the board pursuant to this section. The application must include plans showing the relocated boundaries, a reallocation of all the allocated interests of the units being combined among the units resulting from the combination, and such other information as the board may require. Unless the board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the declaration, sections 209 and 212 of this act, or other provisions of law, the board shall approve the application and prepare any amendments to the declaration and map in accordance with the requirements of subsection (4) of this section.

(3) The association may require payment to the association of a one-time fee or charge or continuing fees or charges payable by the owners of the units whose boundaries are being relocated to include common elements.

(4) The association must prepare, execute, and record any amendments to the declaration and, in a condominium, cooperative, or miscellaneous community, the map, prepared in accordance with

the requirements of sections 210 and 218(3) of this act, subdividing or combining those units. The amendment to the declaration must be executed by the association and unit owner or owners of the units from which the subdivided or combined unit or units are derived, assign an identifying number to each resulting unit, and reallocate the allocated interests formerly allocated to the unit from which a combination was derived to the new unit or, if two or more units are derived from such combination, among the new units in any reasonable manner prescribed by such owners in the amendment or on any other basis the declaration requires. The amendments are effective upon recording.

(5) All costs, including reasonable attorneys' fees, incurred by the association for preparing and recording amendments to the declaration and map under this section must be assessed to the unit, the boundaries of which are being relocated.

(6) This section does not apply to the declarant's exercise of any development right to subdivide or combine a unit previously created.

#### **SEC. 215. MONUMENTS AS BOUNDARIES.**

(1) The physical boundaries of a unit located in a building containing or comprising that unit constructed or reconstructed in substantial accordance with the map, or amendment to the map, are its boundaries rather than any boundaries shown on the map, regardless of settling or lateral movement of the unit or of any building containing or comprising the unit, or of any minor variance between boundaries of the unit or any building containing or comprising the unit shown on the map.

(2) This section does not relieve a unit owner from liability in case of the unit owner's willful misconduct or relieve a declarant or any other person from liability for failure to adhere to the map.

#### **SEC. 216. USE FOR SALES PURPOSES.**

A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element.

(2) When a declarant no longer owns a unit or has the right to create a unit in the common interest community, the declarant ceases to have any rights under this section unless the unit is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration.

(3) Subject to any limitations in the declaration, a declarant may maintain signs in or on units owned by the declarant or the common elements advertising the common interest community.

(4) This section is subject to the provisions of other state law and local ordinances.

#### **SEC. 217. EASEMENT AND USE RIGHTS.**

(1) Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

(2) Subject to sections 302(2)(f) and 314 of this act, the unit owners have an easement in the common elements for access to their units.

(3) Subject to the declaration and rules, the unit owners have a right to use the common elements that are not limited common elements for the purposes for which the common elements were intended.

#### **SEC. 218. AMENDMENT OF DECLARATION.**

(1)(a) Except in cases of amendments that may be executed by: A declarant under subsection (10) of this section, sections 209(2), 210(12), 211, or 304(2)(d) of this act; the association under section 106, 207(5), 209(3), 213(1), or 214 of this act or subsection (11) of this section; or certain unit owners under section 209(2), 213(1), 214(2), or 219(2) of this act, and except as limited by subsections (4), (6), (7), (8), and (12) of this section, the declaration may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, unless the declaration specifies a different percentage not to exceed ninety percent for all amendments or for specific subjects of amendment. For purposes of this section, “amendment” means any change to the declaration, including adding, removing, or modifying restrictions contained in a declaration.

(b) If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval; however, any right of approval may not result in an expansion of special declarant rights reserved in the declaration or violate any other section of this chapter, including sections 103, 8 111, 112, and 113 of this act.

(2) In the absence of fraud, any action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to section 213(1) of this act, must be indexed in the grantee’s index in the name of the common interest community and the association and in the grantor’s index in the name of the parties executing the amendment.

(4) Except to the extent expressly permitted or required under this chapter, an amendment may not create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit without the consent of unit owners to which at least ninety percent of the votes in the association are allocated, including the consent of any unit owner of a unit, the boundaries of which or allocated interest of which is changed by the amendment.

(5) Amendments to the declaration required to be executed by the association must be executed by any authorized officer of the association who must certify in the amendment that it was properly adopted.

(6) The declaration may require a higher percentage of unit owner approval for an amendment that is intended to prohibit or materially restrict the uses of units permitted under the applicable zoning ordinances, or to protect the interests of members of a defined class of owners, or to protect other legitimate interests of the association or its members. Subject to subsection (13) of

this section, a declaration may not require, as a condition for amendment, approval by more than ninety percent of the votes in the association or by all but one unit owner, whichever is less. An amendment approved under this subsection must provide reasonable protection for a use permitted at the time the amendment was adopted.

(7) The time limits specified in the declaration pursuant to section 206(1)(g) of this act within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective thirty days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the thirty-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(8) A provision in the declaration creating special declarant rights that have not expired may not be amended without the consent of the declarant. (9) If any provision of this chapter or the declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, the consent is deemed granted if a refusal to consent in a record is not received by the association within sixty days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for notice to the association, the association must provide notice to the address in the security interest of record.

(10) Upon thirty-day advance notice to unit owners, the declarant may, without a vote of the unit owners or approval by the board, unilaterally adopt, execute, and record a corrective amendment or supplement to the governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the governing documents with respect to an objectively verifiable fact including, without limitation, recalculating the undivided interest in the common elements, the liability for common expenses, or the number of votes in the unit owners' association appertaining to a unit, within five years after the recordation or adoption of the governing document containing or creating the mistake, inconsistency, error, or ambiguity. Any such amendment or supplement may not materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

(11) Upon thirty-day advance notice to unit owners, the association may, upon a vote of two-thirds of the members of the board, without a vote of the unit owners, adopt, execute, and record an amendment to the declaration for the following purposes:

(a) To correct or supplement the governing documents as provided in subsection (10) of this section;

(b) To remove language and otherwise amend as necessary to effect the removal of language purporting to forbid or restrict the conveyance, encumbrance, occupancy, or lease to: Individuals of a specified race, creed, color, sex, or national origin; individuals with sensory, mental, or physical disabilities; and families with children or any other legally protected classification;

(c) To remove language and otherwise amend as necessary to effect the removal of language that purports to impose limitations on the power of the association beyond the limit authorized in section 302(1)(u) of this act to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons; and

(d) To remove any other language and otherwise amend as necessary to effect the removal of language purporting to limit the rights of the association or its unit owners in direct conflict with this chapter.

(12) If the declaration requires that amendments to the declaration may be adopted only if the amendment is signed by a specified number or percentage of unit owners and if the common interest community contains more than twenty units, such requirement is deemed satisfied if the association obtains such signatures or the vote or agreement of unit owners holding such number or percentage.

(13)(a) If the declaration requires that amendments to the declaration may be adopted only by the vote or agreement of unit owners of units to which more than sixty-seven percent of the votes in the association are allocated, and the percentage required is otherwise consistent with this chapter, the amendment is approved if:

(i) The approval of the percentage specified in the declaration is obtained;

(ii)(A) Unit owners of units to which at least sixty-seven percent of the votes in the association are allocated vote for or agree to the proposed amendment;

(B) A unit owner does not vote against the proposed amendment; and

(C) Notice of the proposed amendment, including notice that the failure of a unit owner to object may result in the adoption of the amendment, is delivered to the unit owners holding the votes in the association that have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within sixty days after the association delivers notice; or

(iii)(A) Unit owners of units to which at least sixty-seven percent of the votes in the association are allocated vote for or agree to the proposed amendment;

(B) At least one unit owner objects to the proposed amendment; and

(C) Pursuant to an action brought by the association in the county in which the common interest community is situated against all objecting unit owners, the court finds, under the totality of circumstances including, but not limited to, the subject matter of the amendment, the purpose of the amendment, the percentage voting to approve the amendment, and the percentage objecting to the amendment, that the amendment is reasonable.

(b) If the declaration requires the affirmative vote or approval of any particular unit owner or class of unit owners as a condition of its effectiveness, the amendment is not valid without that vote or approval.

## **SEC. 219. TERMINATION OF COMMON INTEREST COMMUNITY.**

(1) Except for a taking of all the units by condemnation, foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in section 226 of this act, a common interest community may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement is void unless it is recorded before that date. A termination agreement and all ratifications of the agreement must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation. An agreement to terminate may only be amended by complying with the requirements of this subsection and subsection (1) of this section.

(3)(a) In the case of a condominium, plat community, or miscellaneous community containing only units having horizontal boundaries between units, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum purchase price, manner of payment, and outside closing date, and may include any other terms of the sale.

(b) In the case of a condominium, plat community, or miscellaneous community containing no units having horizontal boundaries between units, a termination agreement may provide for sale of the common elements that are not necessary for the habitability of a unit, but it may not require that any unit be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum purchase price, manner of payment, and outside closing date, and may include any other terms of sale.

(c) In the case of a condominium, plat community, or miscellaneous community containing some units having horizontal boundaries between units and some units without horizontal boundaries between units, a termination agreement may provide for sale of the common elements that are not necessary for the habitability of a unit, but it may not require that any unit be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners of units in the building to be sold consent to the sale. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum purchase price, manner of payment, and outside closing date, and may include any other terms of sale.

(4)(a) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and

appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination.

(b) Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (6) and (8) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners under this chapter or the declaration.

(5) In a condominium, plat community, or miscellaneous community, if any portion of the real estate constituting the common interest community is not to be sold following termination, title to those portions of the real estate constituting the common elements and, in a common interest community containing units having horizontal boundaries between units described in the declaration, title to all the real estate containing such boundaries in the common interest community vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (8) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(6)(a) Following termination of the common interest community, the proceeds of a sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(b) Following termination of a condominium, plat community, or miscellaneous community, creditors of the association holding liens on the units that were recorded or perfected under RCW 4.64.020 before termination may enforce those liens in the same manner as any lienholder.

(c) All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(7) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative that were recorded or perfected under RCW 4.64.020 before termination may enforce their liens in the same manner as any lienholder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association that was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association must be treated, upon termination, as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(c) The amount of the lien of an association's creditor described in (a) and (b) of this subsection against each of the unit owners' interest must be proportionate to the ratio that each unit's common expense liability bears to the common expense liability of all of the units;

(d) The lien of each creditor of each unit owner that was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected;

(e) The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described in this subsection; and

(f) Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(8) The respective interests of unit owners referred to in subsections (4), (5), (6), and (7) of this section are as follows:

(a) Except as otherwise provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or limited common element before destruction cannot be made, the interests of all unit owners are:

(i) In a condominium, their respective common element interests immediately before the termination;

(ii) In a cooperative, their respective ownership interests immediately before the termination; and

(iii) In a plat community or miscellaneous community, their respective common expense liabilities immediately before the termination.

(9) In a condominium, plat community, or miscellaneous community, except as otherwise provided in subsection (10) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under section 314 of this act, does not withdraw that real estate from the common interest community, but the person taking title to the real estate may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(10) In a condominium, plat community, or miscellaneous community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

(11) The right of partition under chapter 7.52 RCW is suspended if an agreement to sell property is provided for in the termination agreement pursuant to subsection (3)(a), (b), or (c) of this section. The suspension of the right to partition continues unless a binding obligation to sell does not exist three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever occurs first.

#### **SEC. 220. RIGHTS OF SECURED LENDERS.**

(1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

- (a) Deny or delegate control over the general administrative affairs of the association by the unit owners or the board;
- (b) Prevent the association or the board from commencing, intervening in, or settling any litigation or proceeding; or
- (c) Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to section 315 of this act.

(2) With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien security interest need be obtained and the percentage must be based upon the votes attributable to units with respect to which eligible mortgagees have an interest.

(3) A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this chapter and other law. A requirement that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, does not violate the prohibitions on lender approval contained in subsection (1) of this section.

#### **SEC. 221. MASTER ASSOCIATIONS.**

(1) If the declaration provides that any of the powers described in section 302 of this act are to be exercised by or may be delegated to a for-profit or nonprofit corporation or limited liability company that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities, all provisions of this chapter applicable to unit owners associations apply to any such corporation or limited liability company, except as modified by this section.

(2) Unless it is acting in the capacity of an association described in section 301 of this act, a master association may exercise the powers set forth in section 302(1)(b) of this act only to the extent expressly permitted in the declarations of common interest communities that are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(3) If the declaration of any common interest community provides that the board may delegate certain powers to a master association, the board is not liable for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 303, 310, 311, 312, 314, and 322 of this act apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) If a master association is also an association described in section 301 of this act, the organizational documents of the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the board of the master association must be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all common interest communities subject to the master association may elect all members of the master association's board;

(b) All board members of all common interest communities subject to the master association may elect all members of the master association's board;

(c) All unit owners of each common interest community subject to the master association may elect specified members of the master association's board; or

(d) All board members of each common interest community subject to the master association may elect specified members of the master association's board.

## **SEC. 222. DELEGATION OF POWER TO SUBASSOCIATIONS.**

(1)(a) If the declaration provides that any of the powers described in section 302 of this act are to be exercised by or may be delegated to a for-profit corporation or limited liability company that exercises those or other powers on behalf of unit owners owning less than all of the units in a common interest community, and if those unit owners share the exclusive use of one or more limited common elements within the common interest community or share some property or other interest in the common interest community in common that is not shared by the remainder of the unit owners in the common interest community, all provisions of this chapter applicable to unit owners associations apply to any such corporation or limited liability company, except as modified under this section.

(b) The delegation of powers to a subassociation must not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in section 302 of this act only to the extent expressly permitted by the declaration of the common interest community of which the

units in the subassociation are a part of or expressly described in the delegations of power from that common interest community to the subassociation.

(3) If the declaration of any common interest community contains a delegation of certain powers to a subassociation, or provides that the board of the common interest community may make such a delegation, the board members are not liable for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners association set forth in sections 301 through 321 of this act apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding section 304(4) of this act, the board of the subassociation must be elected after any period of declarant control by the unit owners of all of the units in the common interest community subject to the subassociation.

(6) The declaration of the common interest community creating the subassociation may provide that the authority of the board of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of a subassociation is concurrent with and subject to the authority of the board of the unit owners association, in which case the declaration must also contain standards and procedures for the review of the decisions of the board of the subassociation and procedures for resolving any dispute between the board of the unit owners association and the board of the subassociation.

#### **SEC. 223. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.**

(1) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by unit owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement, and every amendment providing for a merger or consolidation made by a declarant when exercising a special declarant right, must identify the declaration that will apply to the resultant common interest community and provide for the reallocation of allocated interests among the units of the resultant common interest community either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating

the percentage of overall allocated interests of the resultant common interest community that are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting common interest community is equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common interest community.

#### **SEC. 224. ADDITION OF UNSPECIFIED REAL ESTATE.**

In a plat community or miscellaneous community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the plat community or miscellaneous community without describing the location of that real estate in the original declaration. The amount of real estate added to the plat community or miscellaneous community pursuant to this section may not exceed ten percent of the real estate described in section 206(1)(b) of this act together with any real estate that is described in the declaration for addition to the plat community or miscellaneous community, and the declarant may not increase the number of units in the plat community or miscellaneous community beyond the number stated in the original declaration pursuant to section 206(1)(c) of this act.

#### **SEC. 225. LARGE SCALE COMMUNITIES.**

(1) The declaration for a common interest community may state that it is a large scale community if the declarant has reserved the development right to create at least five hundred units that may be used for residential purposes and, at the time of the reservation, that declarant owns or controls more than five hundred acres on which the units may be built.

(2) If the requirements of subsection (1) of this section are satisfied, the declaration for the large scale community need not state a maximum number of units and need not contain any of the information required under section 206(1) (c) through (n) of this act until the declaration is amended under subsection (3) of this section.

(3) When each unit in a large scale community is conveyed to a purchaser, the declaration must contain:

(a) A sufficient legal description of the unit and all portions of the large scale community in which any other units have been conveyed to a purchaser; and

(b) All the information required under section 206(1) (c) through (n) of this act with respect to that real estate.

(4) The only real estate in a large scale community subject to this chapter are units that have been made subject to the declaration or that are being offered for sale and any other real estate described pursuant to subsection (3) of this section. Other real estate that is or may become part of the large scale community is only subject to other law and to any other restrictions and limitations that appear of record.

(5) If the public offering statement conspicuously identifies the fact that the community is a large scale community, the disclosure requirements contained in sections 401 through 420 of this act apply only to units that have been made subject to the declaration or are being offered for sale in connection with the public offering statement and to any other real estate described pursuant to subsection (3) of this section.

(6) Limitations in this chapter on the addition of unspecified real estate do not apply to a large scale community.

(7) The period of declarant control of the association for a large scale community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving notice in a record to the board of the association, voluntarily surrenders all rights to control the activities of the association.

#### **SEC. 226. JUDICIAL TERMINATION.**

(1) If substantially all the units in a common interest community have been destroyed or abandoned or are uninhabitable and the available methods for giving notice under section 324 of this act of a meeting of unit owners to consider termination under section 219 of this act will not likely result in receipt of the notice, the board or any other interested person may commence an action seeking to terminate the common interest community in the superior court for any county in which a portion of the common interest community is located. If any portion of the common interest community is located in a county other than the county in which the action is commenced, the person commencing the action must record a copy of the judgment in the other county.

(2) During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

### **III. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**

#### **SEC. 301. ORGANIZATION OF UNIT OWNERS ASSOCIATION.**

(1) A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed to a purchaser.

(2) The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 219 of this act or their heirs, successors, or assigns.

(3) The association must have a board and be organized as a for-profit or nonprofit corporation or limited liability company.

(4) In case of any conflict between Title 23B RCW or chapter 23.86, 24.03, 24.06, or 25.15 RCW and this chapter, this chapter controls.

#### **SEC. 302. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.**

(1) An association must:

(a) Adopt organizational documents;

(b) Adopt budgets as provided in section 326 of this act;

(c) Impose assessments for common expenses and specially allocated expenses on the unit owners as provided in sections 117(1) and 326 of this act;

- (d) Prepare financial statements as provided in section 327 of this act; and
- (e) Deposit and maintain the funds of the association in accounts as provided in section 327 of this act.

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

- (a) Amend organizational documents and adopt and amend rules;
- (b) Amend budgets under section 326 of this act;
- (c) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
- (e) Make contracts and incur liabilities subject to subsection (4) of this section;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:
  - (i) Common elements in a condominium, plat community, or miscellaneous community may be conveyed or subjected to a security interest pursuant to section 314 of this act only; and
  - (ii) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest pursuant to section 314 of this act only;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any reasonable payments, fees, or charges for:
  - (i) The use, rental, or operation of the common elements, other than limited common elements described in section 203 (1)(b) and (3) of this act;
  - (ii) Services provided to unit owners; and
  - (iii) Moving in, moving out, or transferring title to units to the extent provided for in the declaration;
- (k) Collect assessments and impose and collect reasonable charges for late payment of assessments;
- (l) Enforce the governing documents and, after notice and opportunity to be heard, impose and collect reasonable fines for violations of the governing documents in accordance with a previously established schedule of fines adopted by the board of directors and furnished to the owners;

- (m) Impose and collect reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required under section 409 of this act, lender questionnaires, or statements of unpaid assessments;
- (n) Provide for the indemnification of its officers and board members, to the extent provided in RCW 23B.17.030;
- (o) Maintain directors' and officers' liability insurance;
- (p) Subject to subsection (4) of this section, assign its right to future income, including the right to receive assessments;
- (q) Join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects that benefit the condominium directly or indirectly;
- (r) Establish and administer a reserve account as described in section 328 of this act;
- (s) Prepare a reserve study as described in section 330 of this act;
- (t) Exercise any other powers conferred by the declaration or organizational documents;
- (u) Exercise all other powers that may be exercised in this state by the same type of entity as the association;
- (v) Exercise any other powers necessary and proper for the governance and operation of the association;
- (w) Require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community, other than those governed by chapter 64.50 RCW, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; and
- (x) Suspend any right or privilege of a unit owner who fails to pay an assessment, but may not:
  - (i) Deny a unit owner or other occupant access to the owner's unit;
  - (ii) Suspend a unit owner's right to vote; or
  - (iii) Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

(3) The declaration may not limit the power of the association beyond the limit authorized in subsection (2)(w) of this section to:

- (a) Deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons; or
- (b) Institute litigation or an arbitration, mediation, or administrative proceeding against any person, subject to the following:

(i) The association must comply with chapter 64.50 RCW, if applicable, before instituting any proceeding described in chapter 64.50 RCW in connection with construction defects; and

(ii) The board must promptly provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association.

(4) Any borrowing by an association that is to be secured by an assignment of the association's right to receive future income pursuant to subsection (2)(e) and (p) of this section requires ratification by the unit owners as provided in this subsection.

(a) The board must provide notice of the intent to borrow to all unit owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

(b) In the notice, the board must set a date for a meeting of the unit owners, which must not be less than fourteen and no more than sixty days after mailing of the notice, to consider ratification of the borrowing.

(c) Unless at that meeting, whether or not a quorum is present, unit owners holding a majority of the votes in the association or any larger percentage specified in the declaration reject the proposal to borrow funds, the association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

(5) If a tenant of a unit owner violates the governing documents, in addition to exercising any of its powers against the unit owner, the association may:

(a) Exercise directly against the tenant the powers described in subsection (2)(l) of this section;

(b) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant and unit owner for the violation; and

(c) Enforce any other rights against the tenant for the violation that the unit owner as the landlord could lawfully have exercised under the lease or that the association could lawfully have exercised directly against the unit owner, or both; but the association does not have the right to terminate a lease or evict a tenant unless permitted by the declaration. The rights referred to in this subsection (5)(c) may be exercised only if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation.

(6) Unless a lease otherwise provides, this section does not:

(a) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(b) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the governing documents.

(7) The board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the governing documents, including whether to compromise any claim for unpaid assessments or other claim made by or against it.

(8) The board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

(9) The board's decision under subsections (7) and (8) of this section to not pursue enforcement under one set of circumstances does not prevent the board from taking enforcement action under another set of circumstances, but the board may not be arbitrary or capricious in taking enforcement action.

### **SEC. 303. BOARD MEMBERS, OFFICERS, AND COMMITTEES.**

(1)(a) Except as provided otherwise in the governing documents, subsection (4) of this section, or other provisions of this chapter, the board may act on behalf of the association.

(b) In the performance of their duties, officers and board members must exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under chapter 24.06 RCW. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(2)(a) Except as provided otherwise in section 221(5) of this act, effective as of the transition meeting held in accordance with section 304(4) of this act, the board must be comprised of at least three members, at least a majority of whom must be unit owners. However, the number of board members need not exceed the number of units then in the common interest community.

(b) Unless the declaration or organizational documents provide for the election of officers by the unit owners, the board must elect the officers.

(c) Unless provided otherwise in the declaration or organizational documents, board members and officers must take office upon adjournment of the meeting at which they were elected or appointed or, if not elected or appointed at a meeting, at the time of such election or appointment, and must serve until their successor takes office.

(d) In determining the qualifications of any officer or board member of the association, "unit owner" includes, unless the declaration or organizational documents provide otherwise, any board member, officer, member, partner, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner.

(e) Any officer or board member of the association who would not be eligible to serve as such if he or she were not a board member, officer, partner in, or trustee of such a person is disqualified from continuing in office if he or she ceases to have any such affiliation with that person or that person would have been disqualified from continuing in such office as a natural person.

(3) Except when voting as a unit owner, the declarant may not appoint or elect any person or to serve itself as a voting, ex officio or nonvoting board member following the transition meeting.

(4) The board may not, without vote or agreement of the unit owners:

(a) Amend the declaration, except as provided in section 218 of this act;

(b) Amend the organizational documents of the association;

(c) Terminate the common interest community;

(d) Elect members of the board, but may fill vacancies in its membership not resulting from removal for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of board members; or

(e) Determine the qualifications, powers, duties, or terms of office of board members.

(5) The board must adopt budgets as provided in section 326 of this act.

(6) Except for committees appointed by the declarant pursuant to special declarant rights, all committees of the association must be appointed by the board. Committees authorized to exercise any power reserved to the board must include at least two board members who have exclusive voting power for that committee. Committees that are not so composed may not exercise the authority of the board and are advisory only.

#### **SEC. 304. PERIOD OF DECLARANT CONTROL—TRANSITION.**

(1)(a) Subject to subsection (3) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may:

(i) Appoint and remove the officers and board members; or

(ii) Veto or approve a proposed action of the board or association.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and board members before the period ends. In that event, the declarant may require that during the remainder of the period, specified actions of the association or board, as described in a recorded amendment to the declaration executed by the declarant, be approved by the declarant before they become effective. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action is deemed approval by the declarant.

(2) Regardless of the period provided in the declaration, and except as provided in section 225(7) of this act, a period of declarant control terminates no later than the earliest of:

(a) Sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant;

- (b) Two years after the last conveyance of a unit, except to a dealer;
- (c) Two years after any right to add new units was last exercised; or
- (d) The day the declarant, after giving notice in a record to unit owners, records an amendment to the declaration voluntarily surrendering all rights to appoint and remove officers and board members.

(3) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board must be elected by unit owners other than the declarant. Until such members are elected and take office, the existing board may continue to act on behalf of the association.

(4) Within thirty days after the termination of any period of declarant control or, in the absence of such period, not later than a date that is sixty days after the conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, the board must schedule a transition meeting and provide notice to the unit owners in accordance with section 310(1)(c) of this act. At the transition meeting, the board elected by the unit owners must be elected in accordance with section 303(2) of this act.

#### **SEC. 305. TRANSFER OF ASSOCIATION PROPERTY.**

(1) No later than thirty days following the date of the transition meeting held pursuant to section 304(4) of this act, the declarant must deliver or cause to be delivered to the board elected at the transition meeting all property of the unit owners and association as required by the declaration or this chapter including, but not limited to:

- (a) The original or a copy of the recorded declaration and each amendment to the declaration;
- (b) The organizational documents of the association;
- (c) The minute books, including all minutes, and other books and records of the association;
- (d) Current rules and regulations that have been adopted;
- (e) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;
- (f) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of formation of the association through the date of transfer of control to the unit owners;
- (g) Association funds or the control of the funds of the association;
- (h) Originals or copies of any recorded instruments of conveyance for any common elements included within the common interest community but not appurtenant to the units;
- (i) All tangible personal property of the association;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the most recent plans and specifications used in the construction or remodeling of the common interest community, except for buildings containing fewer than three units;

(k) Originals or copies of insurance policies for the common interest community and association;

(l) Originals or copies of any certificates of occupancy that may have been issued for the common interest community;

(m) Originals or copies of any other permits obtained by or on behalf of the declarant and issued by governmental bodies applicable to the common interest community;

(n) Originals or copies of all written warranties that are still in effect for the common elements, or any other areas or facilities that the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Originals or copies of any leases of the common elements and other leases to which the association is a party;

(q) Originals or photocopies of any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(r) Originals or copies of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) Originals or copies of all other contracts to which the association is a party.

(2) Within sixty days of the transition meeting, the board must retain the services of a certified public accountant to audit the records of the association as the date of the transition meeting in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, to which a majority of the votes are allocated elect to waive the audit. The cost of the audit must be a common expense unless otherwise provided in the declaration. The accountant performing the audit must examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments.

(3) A declaration may provide for the appointment of specified positions on the board by persons other than the declarant or an affiliate of the declarant during or after the period of declarant control. It also may provide a method for filling vacancies in those positions, other than by election by the unit owners. However, after the period of declarant control, appointed members:

(a) May not comprise more than one-third of the board; and

(b) Have no greater authority than any other board member.

**SEC. 306. TRANSFER OF SPECIAL DECLARANT RIGHTS.**

(1) Except as provided in subsection (3) of this section, a special declarant right created or reserved under this chapter may be transferred only by an instrument effecting the transfer and executed by the transferor, to be recorded in every county in which any portion of the common interest community is located. The transferee must provide the association with a copy of the recorded instrument, but the failure to furnish the copy does not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for such warranty obligations arising before the transfer imposed upon the transferor under this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common interest community.

(c) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant under this chapter or by the declaration relating to the retained special declarant rights, whether arising before or after the transfer.

(d) A transferor is not liable for any act or omission or any breach of a contractual or warranty obligation by a successor declarant who is not an affiliate of the transferor.

(3) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a common interest community that is subject to any special declarant rights, a person acquiring title to the real property being foreclosed or sold succeeds to all of the special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to section 216 of this act and held by that declarant to maintain models, sales offices, and signs except to the extent the judgment or instrument effecting the transfer states otherwise.

(4) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all interests in a common interest community owned by a declarant, any special declarant rights that are not transferred as stated in subsection (3) of this section terminate.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor under this chapter or by the declaration.

(b) A successor to any special declarant right, other than a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed under this chapter or the declaration:

- (i) On a declarant that relate to the successor's exercise of special declarant rights; and
- (ii) On the declarant's transferor, other than:
  - (A) Misrepresentations by any previous declarant;
  - (B) Any warranty obligations pursuant to section 415 (1) through (3) of this act on improvements made or contracted for, or units sold by, a previous declarant or that were made before the common interest community was created;
  - (C) Breach of any fiduciary obligation by any previous declarant or the previous declarant's appointees to the board; or
  - (D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result of such reserved rights.

(6) This section does not subject any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

### **SEC. 307. TERMINATION OF CONTRACTS AND LEASES.**

(1) Within two years after the transition meeting, the association may terminate without penalty, upon not less than ninety days' notice to the other party, any of the following if it was entered into before the board was elected:

- (a) Any management, maintenance, operations, or employment contract, or lease of recreational or parking areas or facilities; or
- (b) Any other contract or lease between the association and a declarant or an affiliate of a declarant.

(2) The association may terminate without penalty, at any time after the board elected by the unit owners pursuant to section 304(4) of this act takes office upon not less than ninety days' notice to the other party, any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into.

(3) This section does not apply to:

- (a) Any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or
- (b) A proprietary lease.

### **SEC. 308. ORGANIZATIONAL DOCUMENTS.**

- (1) Unless provided for in the declaration, the organizational documents of the association must:
  - (a) Provide the number of board members and the titles of the officers of the association;
  - (b) Provide for election by the board or, if the declaration requires, by the unit owners of a president, treasurer, secretary, and any other officers of the association the organizational documents specify;
  - (c) Specify the qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies in accordance with section 303 of this act;
  - (d) Specify the powers the board or officers may delegate to other persons or to a managing agent;
  - (e) Specify a method for the unit owners to amend the organizational documents;
  - (f) Describe the budget ratification process required under section 326 of this act, if not provided in the declaration;
  - (g) Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums, and other activities of the association; and
  - (h) Provide for any matter required by law of this state other than this chapter to appear in the organizational documents of organizations of the same type as the association.
- (2) Subject to the declaration and this chapter, the organizational documents may provide for any other necessary or appropriate matters.

### **SEC. 309. UPKEEP OF COMMON INTEREST COMMUNITY.**

- (1) Except to the extent provided by the declaration, subsections (2) and(4) of this section, or section 315(8) of this act, the association must maintain, repair, and replace the common elements, including limited common elements, and each unit owner must maintain, repair, and replace that owner's unit.
- (2) The board may by rule designate physical components of the property for which a unit owner is otherwise responsible that present a heightened risk of damage or harm to persons or property if the physical components fail. The association may require that specific measures be taken by the unit owner or the association to diminish that risk of harm. If a unit owner fails to accomplish any necessary maintenance, repair, or replacement to those components, or fails to take any other measures required of the unit owner under this subsection, the association may, after notice to a unit owner and an opportunity to be heard, enter the unit in the manner pursuant to subsection (3) of this section to perform such maintenance, repair, replacement, or measure at the expense of that unit owner.
- (3) Upon prior notice, except in case of an emergency, each unit owner must afford to the association and the other unit owners, and to their agents or employees, access through that owner's unit and limited common elements reasonably necessary for the purposes stated in subsections (1) and (2) of this section, including necessary inspections by the association. If damage is inflicted on the common elements or on any unit through which access is taken, the

unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(4) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights and no other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. However, the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use must be paid by the association as a common expense. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

(5) In a plat community or miscellaneous community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

### **SEC. 310. MEETINGS.**

(1) The following requirements apply to unit owner meetings:

(a) A meeting of the association must be held at least once each year. Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the association and does not affect otherwise valid association acts.

(b)(i) An association must hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the board, or unit owners having at least twenty percent, or any lower percentage specified in the organizational documents, of the votes in the association request that the secretary call the meeting.

(ii) If the association does not provide notice to unit owners of a special meeting within thirty days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly provide notice to all the unit owners of the meeting. Only matters described in the meeting notice required in (c) of this subsection may be considered at a special meeting.

(c) An association must provide notice to unit owners of the time, date, and place of each annual and special unit owners meeting not less than fourteen days and not more than fifty days before the meeting date. Notice may be by any means described in section 324 of this act. The notice of any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(i) The text of any proposed amendment to the declaration or organizational documents;

(ii) Any changes in the previously approved budget that result in a change in the assessment obligations; and

(iii) Any proposal to remove a board member or officer.

(d) The minimum time to provide notice required in (c) of this subsection may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(f) The declaration or organizational documents may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the process is consistent with subsection (2)(i) of this section.

(2) The following requirements apply to meetings of the board and committees authorized to act for the board:

(a) Meetings must be open to the unit owners except during executive sessions, but the board may expel or prohibit attendance by any person who, after warning by the chair of the meeting, disrupts the meeting. The board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. A final vote or action may not be taken during an executive session.

(b) An executive session may be held only to:

(i) Consult with the association's attorney concerning legal matters;

(ii) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(iii) Discuss labor or personnel matters;

(iv) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(v) Prevent public knowledge of the matter to be discussed if the board or committee determines that public knowledge would violate the privacy of any person.

(c) For purposes of this subsection, a gathering of members of the board or committees at which the board or committee members do not conduct association business is not a meeting of the board or committee. Board members and committee members may not use incidental or social gatherings to evade the open meeting requirements of this subsection.

(d) During the period of declarant control, the board must meet at least four times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After the transition meeting, all board meetings must be at the common interest community or at a place convenient to the common interest community unless the unit owners amend the bylaws to vary the location of those meetings.

(e) At each board meeting, the board must provide a reasonable opportunity for unit owners to comment regarding matters affecting the common interest community and the association.

(f) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the organizational documents must provide notice of each board meeting to each board member and to the unit owners. The notice must be given at least fourteen days before the meeting and must state the time, date, place, and agenda of the meeting.

(g) If any materials are distributed to the board before the meeting, the board must make copies of those materials reasonably available to those unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(h) Unless the organizational documents provide otherwise, fewer than all board members may participate in a regular or special meeting by or conduct a meeting through the use of any means of communication by which all board members participating can hear each other during the meeting. A board member participating in a meeting by these means is deemed to be present in person at the meeting.

(i) Unless the organizational documents provide otherwise, the board may meet by participation of all board members by telephonic, video, or other conferencing process if:

(i) The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(ii) The process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in (e) of this subsection.

(j) After the transition meeting, unit owners may amend the organizational documents to vary the procedures for meetings described in (i) of this subsection.

(k) Instead of meeting, the board may act by unanimous consent as documented in a record by all its members. Actions taken by unanimous consent must be kept as a record of the association with the meeting minutes. After the transition meeting, the board may act by unanimous consent only to undertake ministerial actions, actions subject to ratification by the unit owners, or to implement actions previously taken at a meeting of the board.

(l) A board member who is present at a board meeting at which any action is taken is presumed to have assented to the action taken unless the board member's dissent or abstention to such action is lodged with the person acting as the secretary of the meeting before adjournment of the meeting or provided in a record to the secretary of the association immediately after adjournment of the meeting. The right to dissent or abstain does not apply to a board member who voted in favor of such action at the meeting.

(m) A board member may not vote by proxy or absentee ballot.

(n) Even if an action by the board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the board for failure to comply with this section may not be brought more than ninety days after the minutes of the board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

(3) Minutes of all unit owner meetings and board meetings, excluding executive sessions, must be maintained in a record. The decision on each matter voted upon at a board meeting or unit owner meeting must be recorded in the minutes.

### **SEC. 311. QUORUM.**

Unless the organizational documents provide otherwise, a quorum is present throughout any meeting of the unit owners if persons entitled to cast twenty percent of the votes in the association:

- (a) Are present in person or by proxy at the beginning of the meeting;
- (b) Have voted by absentee ballot; or
- (c) Are present by any combination of (a) and (b) of this subsection.

(2) Unless the organizational documents specify a larger number, a quorum of the board is present for purposes of determining the validity of any action taken at a meeting of the board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the board unless a greater vote is required by the organizational documents.

### **SEC. 312. UNIT OWNER VOTING.**

(1) Unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (3)(d) of this section, or by a proxy pursuant to subsection (5) of this section.

(2) When a vote is conducted without a meeting, unit owners may vote by ballot pursuant to subsection (6) of this section.

(3) At a meeting of unit owners the following requirements apply:

(a) Unit owners or their proxies who are present in person may vote by voice vote, show of hands, standing, written ballot, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(b) If only one of several unit owners of a unit is present, that unit owner is entitled to cast all the votes allocated to that unit. If more than one of the unit owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the unit owners, unless the declaration expressly provides otherwise. There is a majority agreement if any one of the unit owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other unit owners of the unit.

(c) Unless a greater number or fraction of the votes in the association is required under this chapter or the declaration or organizational documents, a majority of the votes cast determines the outcome of any action of the association.

(d) Whenever proposals or board members are to be voted upon at a meeting, a unit owner may vote by duly executed absentee ballot if:

(i) The name of each candidate and the text of each proposal to be voted upon are set forth in a writing accompanying or contained in the notice of meeting; and

(ii) A ballot is provided by the association for such purpose.

(4) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(5) Except as provided otherwise in the declaration or organizational documents, the following requirements apply with respect to proxy voting:

(a) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner in the same manner as provided in RCW 24.06.110.

(b) If a unit is owned by more than one person, each unit owner of the unit may vote or register protest to the casting of votes by the other unit owners of the unit through a duly executed proxy.

(c) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary or the person presiding over a meeting of the association or by delivery of a subsequent proxy. The death or disability of a unit owner does not revoke a proxy given by the unit owner unless the person presiding over the meeting has actual notice of the death or disability.

(d) A proxy is void if it is not dated or purports to be revocable without notice.

(e) Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(6) Unless prohibited or limited by the declaration or organizational documents, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(a) The association must notify the unit owners that the vote will be taken by ballot.

(b) The notice must state:

(i) The time and date by which a ballot must be delivered to the association to be counted, which may not be fewer than fourteen days after the date of the notice, and which deadline may be extended in accordance with (g) of this subsection;

(ii) The percent of votes necessary to meet the quorum requirements;

(iii) The percent of votes necessary to approve each matter other than election of board members; and

(iv) The time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(c) The association must deliver a ballot to every unit owner with the notice.

(d) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(e) A ballot cast pursuant to this section may be revoked only by actual notice to the association of revocation. The death or disability of a unit owner does not revoke a ballot unless the association has actual notice of the death or disability prior to the date set forth in (b)(i) of this subsection.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(g) If the association does not receive a sufficient number of votes to constitute a quorum or to approve the proposal by the date and time established for return of ballots, the board may extend the deadline for a reasonable period not to exceed eleven months upon further notice to all members in accordance with (b) of this subsection. In that event, all votes previously cast on the proposal must be counted unless subsequently revoked as provided in this section.

(h) A ballot or revocation is not effective until received by the association.

(i) The association must give notice to unit owners of any action taken pursuant to this subsection within a reasonable time after the action is taken.

(j) When an action is taken pursuant to this subsection, a record of the action, including the ballots or a report of the persons appointed to tabulate such ballots, must be kept with the minutes of meetings of the association.

(7) If the governing documents require that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(a) This section applies to lessees as if they were unit owners;

(b) Unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(c) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(8) Unit owners must also be given notice, in the manner provided in section 324 of this act, of all meetings at which lessees may be entitled to vote.

(9) In any vote of the unit owners, votes allocated to a unit owned by the association must be cast in the same proportion as the votes cast on the matter by unit owners other than the association.

### **SEC. 313. TORT AND CONTRACT LIABILITY—TOLLING OF LIMITATION PERIOD.**

(1) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the common interest community which that declarant must maintain.

(2)(a) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner.

(b) If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for (i) all tort losses not covered by insurance suffered by the association or that unit owner and (ii) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission by the association.

(c) If a declarant is liable to an association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorneys' fees and costs, incurred by the association.

(3)(a) Except as provided in section 417 of this act with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this chapter is tolled until any period of declarant control terminates.

(b) A unit owner is not precluded from maintaining an action contemplated under this section because that person is a unit owner, board member, or officer of the association. Liens resulting from judgments against the association are governed under section 319 of this act.

#### **SEC. 314. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.**

(1)(a) In a common interest community other than a cooperative, portions of the common elements may be conveyed or subjected to a security interest by the association if unit owners entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all unit owners of units to which any limited common element is allocated must agree to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) Proceeds of the sale or a loan are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the unit owners of units to which the limited common elements were allocated. This subsection (1) does not apply to the incorporation of common elements into units as a result of relocating unit boundaries pursuant to section 213 of this act, to subdividing or combining units pursuant to section 214 of this act, or to eminent domain proceedings pursuant to section 106 of this act.

(2)(a) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if unit owners entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, all unit owners of those units, or the units to which those limited common elements are allocated, must agree to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) Proceeds of the sale or a loan are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to section 219 of this act, is void. This subsection (2) does not apply to the incorporation of common elements into units as a result of relocating unit boundaries pursuant to section 213 of this act, to subdividing or combining units pursuant to section 214 of this act, or to eminent domain proceedings pursuant to section 106 of this act.

(3) An agreement to convey common elements in a common interest community other than a cooperative, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications of the agreement must

be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey or dedicate an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsection (1), (2), or (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. (5) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

(7) Unless the declaration requires a higher percentage, if the consent of eligible mortgagees holding security interests on at least eighty percent of the units subject to security interests held by eligible mortgagees on the day the unit owners' agreement under subsection (3) of this section is recorded, is obtained:

(a) A conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

(b) An encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(8) The consents of eligible mortgagees, or a certificate of the secretary affirming that the requisite percentage of eligible mortgagees have consented, may be recorded at any time before the date on which the agreement under subsection (3) of this section becomes void. Such consents or certificates recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting eligible mortgagees, regardless of later conveyance or encumbrances on those units. If the required percentage of eligible mortgagees consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration or created by the association after the declaration was recorded.

(9) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

### **SEC. 315. INSURANCE.**

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association must maintain in its own name, to the extent reasonably available and subject to reasonable deductibles:

(a) Property insurance on the common elements and, in a plat community or miscellaneous community, also on property that must become common elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies;

(b) Commercial general liability insurance, including medical payments insurance, in an amount determined by the board, but not less than any amount specified in the declaration, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, of all units;

(c) Fidelity insurance; and

(d) Other insurance required under the declaration.

(2) In the case of a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, the insurance maintained under subsection (1)(a) of this section, to the extent reasonably available, must include the units and, unless provided otherwise in the declaration, all improvements and betterments to the units.

(3) If the insurance described in subsections (1) and (2) of this section is not reasonably available, the association must promptly cause notice of that fact to be given to all unit owners. The association may carry any other insurance it considers appropriate to protect the association or the unit owners.

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner or member of the unit owner's household;

(c) Any act or omission by a unit owner, unless acting within the unit owner's scope of authority on behalf of the association, does not void the policy and is not a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(5) Any loss covered by the property insurance policy under subsection (1)(a) and (b) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association must hold any insurance proceeds in trust for the association, unit owners, and lienholders as their interests may appear. Subject to subsection (8) of this section, the proceeds must be disbursed first for the repair or replacement of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced, or the common interest community is terminated.

(6) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

(7) An insurer that has issued an insurance policy under this section must issue certificates or memoranda of insurance to the association and, upon a request made in a record, to any unit owner or holder of a security interest. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy without complying with this section.

(8) Any portion of the common interest community for which insurance is required under this section that is damaged or destroyed must be repaired or replaced promptly by the association unless:

- (a) The common interest community is terminated, in which case section 219 of this act applies;
- (b) Repair or replacement would be illegal; or
- (c) Eighty percent of the unit owners, including every unit owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

(9) The cost of repair or replacement not paid from insurance proceeds is a common expense. If all of the damaged or destroyed portions of the common interest community are not repaired or replaced:

- (a) The insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community; and
- (b) Except to the extent that other persons will be distributees:
  - (i) The insurance proceeds attributable to units and limited common elements that are not repaired or replaced must be distributed to the unit owners of those units and the unit owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and
  - (ii) The remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:
    - (A) In a condominium, in proportion to the common element interests of all the units; and
    - (B) In a cooperative, plat community, or miscellaneous community, in proportion to the common expense liabilities of all the units.

(10) If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 106 of this act, and the association promptly must prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(11) The provisions of this section may be varied or waived as provided in the declaration if all units of a common interest community are restricted to nonresidential use.

### **SEC. 316. ACCOUNTS—RECONCILIATION.**

(1) The association must establish and maintain its accounts and records in a manner that will enable it to credit assessments for common expenses and specially allocated expenses, including allocations to reserves, and other income to the association, and to charge expenditures, to the account of the appropriate units in accordance with the provisions of the declaration.

(2) To assure that the unit owners are correctly assessed for the actual expenses of the association, the accounts of the association must be reconciled at least annually unless the board determines that a reconciliation would not result in a material savings to any unit owner. Unless provided otherwise in the declaration, any surplus funds of the association remaining after the payment of or provision for common expenses and any prepayment of reserves must be paid annually to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

### **SEC. 317. ASSESSMENTS AND CAPITAL CONTRIBUTIONS.**

(1)(a) Assessments for common expenses and those specially allocated expenses that are subject to inclusion in a budget must be made at least annually based on a budget adopted at least annually by the association in the manner provided in section 326 of this act.

(b) Assessments for common expenses and specially allocated expenses must commence on all units that have been created upon the conveyance of the first unit in the common interest community; however, the declarant may delay commencement of assessments for some or all common expenses or specially allocated expenses, in which event the declarant must pay all of the common expenses or specially allocated expenses that have been delayed. In a common interest community in which units may be added pursuant to reserved development rights, the declarant may delay commencement of assessments for such units in the same manner.

(2) The declaration may provide that, upon closing of the first conveyance of each unit to a purchaser or first occupancy of a unit, whichever occurs first, the association may assess and collect a working capital contribution for such unit. The working capital contribution may be collected prior to the commencement of common assessments under subsection (1) of this section. A working capital contribution may not be used to defray expenses that are the obligation of the declarant.

(3) Except as provided otherwise in this section, all common expenses must be assessed against all the units in accordance with their common expense liabilities, subject to the right of the declarant to delay commencement of certain common expenses under subsections (1) and (2) of this section. Any past due assessment or installment of past due assessment bears interest at the rate established by the association pursuant to section 318 of this act.

(4) The declaration may provide that any of the following expenses of the association must be assessed against the units on some basis other than common expense liability. If and to the extent the declaration so provides, the association must assess:

(a) Expenses associated with the operation, maintenance, repair, or replacement of any specified limited common element against the units to which that limited common element is assigned, equally or in any other proportion that the declaration provides;

(b) Expenses specified in the declaration as benefiting fewer than all of the units or their unit owners exclusively against the units benefited in proportion to their common expense liability or in any other proportion that the declaration provides;

(c) The costs of insurance in proportion to risk; and

(d) The costs of one or more specified utilities in proportion to respective usage or upon the same basis as such utility charges are made by the utility provider.

(5) Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(6) To the extent that any expense of the association is caused by willful misconduct or gross negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, even if the association maintains insurance with respect to that damage or common expense.

(7) If the declaration so provides, to the extent that any expense of the association is caused by the negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, to the extent of the association's deductible and any expenses not covered under an insurance policy issued to the association.

(8) In the event of a loss or damage to a unit that would be covered by the association's property insurance policy, excluding policies for earthquake, flood, or similar losses that have higher than standard deductibles, but that is within the deductible under that policy and if the declaration so provides, the association may assess the amount of the loss up to the deductible against that unit. This subsection does not prevent a unit owner from asserting a claim against another person for the amount assessed if that other person would be liable for the damages under general legal principles.

(9) If common expense liabilities are reallocated, assessments and any installment of assessments not yet due must be recalculated in accordance with the reallocated common expense liabilities.

#### **SEC. 318. LIEN FOR SUMS DUE ASSOCIATION—ENFORCEMENT.**

(1) The association has a statutory lien on each unit for any unpaid assessment against the unit from the time such assessment is due.

(2) A lien under this section has priority over all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances that the association creates, assumes, or takes subject to;

(b) Except as otherwise provided in subsection (3) of this section, a security interest on the unit recorded before the date on which the unpaid assessment became due or, in a cooperative, a security interest encumbering only the unit owner's interest and perfected before the date on which the unpaid assessment became due; and

(c) Liens for real estate taxes and other state or local governmental assessments or charges against the unit or cooperative.

(3)(a) A lien under this section also has priority over the security interests described in subsection (2)(b) of this section to the extent of an amount equal to the following:

(i) The common expense assessments, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to section 317(1) of this act, along with any specially allocated assessments that are properly assessable against the unit under such periodic budget, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the association's lien or a security interest described in subsection (2)(b) of this section;

(ii) The association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the notice described in (a)(iii) of this subsection; provided, however, that the costs and reasonable attorneys' fees that will have priority under this subsection (3)(a)(ii) shall not exceed two thousand dollars or an amount equal to the amounts described in (a)(i) of this subsection, whichever is less;

(iii) The amounts described in (a)(ii) of this subsection shall be prior only to the security interest of the holder of a security interest on the unit recorded before the date on which the unpaid assessment became due and only if the association has given that holder not less than sixty days' prior written notice that the owner of the unit is in default in payment of an assessment. The notice shall contain:

(A) Name of the borrower;

(B) Recording date of the trust deed or mortgage;

(C) Recording information;

(D) Name of condominium, unit owner, and unit designation stated in the declaration or applicable supplemental declaration;

(E) Amount of unpaid assessment; and

(F) A statement that failure to, within sixty days of the written notice, submit the association payment of six months of assessments as described in (a)(i) of this subsection will result in the priority of the amounts described in (a)(ii) of this subsection; and

(iv) Upon payment of the amounts described in (a)(i) of this subsection by the holder of a security interest, the association's lien described in this subsection (3)(a) shall thereafter be fully subordinated to the lien of such holder's security interest on the unit.

(b) For the purposes of this subsection:

(i) "Institution of proceedings" means either:

(A) The date of recording of a notice of trustee's sale by a deed of trust beneficiary;

- (B) The date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the association or by the holder of a recorded security interest; or
- (C) The date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract.
- (ii) “Capital improvements” does not include making, in the ordinary course of management, repairs to common elements or replacements of the common elements with substantially similar items, subject to: (A) Availability of materials and products, (B) prevailing law, or (C) sound engineering and construction standards then prevailing.
- (c) The adoption of a periodic budget that purports to allocate to a unit any fines, late charges, interest, attorneys’ fees and costs incurred for services unrelated to the foreclosure of the association’s lien, other collection charges, or specially allocated assessments assessed under section 317 (6) or (7) of this act does not cause any such items to be included in the priority amount affecting such unit.
- (4) Subsections (2) and (3) of this section do not affect the priority of mechanics’ or material suppliers’ liens to the extent that law of this state other than this act gives priority to such liens, or the priority of liens for other assessments made by the association.
- (5) A lien under this section is not subject to chapter 6.13 RCW.
- (6) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided under subsection (13) of this section, the association is not entitled to the lien priority provided for under subsection (3) of this section, and is subject to the limitations on deficiency judgments as provided in chapter 61.24 RCW.
- (7) Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority as to each other, and any foreclosure of one such lien shall not affect the lien of the other.
- (8) Recording of the declaration constitutes record notice and perfection of the statutory lien created under this section. Further notice or recordation of any claim of lien for assessment under this section is not required, but is not prohibited.
- (9) A lien for unpaid assessments and the personal liability for payment of those assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the full amount of the assessments sought to be recovered becomes due.
- (10) This section does not prohibit actions against unit owners to recover sums for which subsection (1) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.
- (11) The association upon written request must furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments or the priority amount against that unit, or both. The statement must be furnished within fifteen days after receipt of the request and is binding on the association, the board, and every unit owner unless, and to the extent, known by the recipient to be false. The

liability of a recipient who reasonably relies upon the statement must not exceed the amount set forth in any statement furnished pursuant to this section or section 409(1)(b) of this act.

(12) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided under this section.

(13) The association's lien may be foreclosed in accordance with (a) and (b) of this subsection.

(a) In a common interest community other than a cooperative, the association's lien may be foreclosed judicially in accordance with chapter 61.12 RCW, subject to any rights of redemption under chapter 8 6.23 RCW.

(b) The lien may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration: Contains a grant of the common interest community in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, contains a power of sale, provides in its terms that the units are not used principally for agricultural purposes, and provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative may purchase the unit at the foreclosure sale and acquire, hold, lease, mortgage, or convey the unit. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption is eight months.

(c) In a cooperative in which the unit owners' interests in the units are real estate, the association's lien must be foreclosed in like manner as a mortgage on real estate or by power of sale under (b) of this subsection.

(d) In a cooperative in which the unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under chapter 62A.9A RCW.

(14) If the unit owner's interest in a unit in a cooperative is real estate, the following requirements apply:

(a) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. The association must give to the unit owner and any lessee of the unit owner reasonable notice in a record of the time, date, and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time and date after which a private conveyance may be made. Such notice must also be sent to any other person that has a recorded interest in the unit that would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required under this subsection may be sent to any address reasonable in the circumstances. A sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(b) Unless otherwise agreed to or as stated in this section, the unit owner is liable for any deficiency in a foreclosure sale.

(c) The proceeds of a foreclosure sale must be applied in the following order:

(i) The reasonable expenses of sale;

(ii) The reasonable expenses of securing possession before sale; the reasonable expenses of holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges and premiums on insurance; and, to the extent provided for by agreement between the association and the unit owner, reasonable attorneys' fees, costs, and other legal expenses incurred by the association;

(iii) Satisfaction of the association's lien;

(iv) Satisfaction in the order of priority of any subordinate claim of record; and

(v) Remittance of any excess to the unit owner.

(d) A good-faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale must execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required under this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(e) At any time before the association has conveyed a unit in a cooperative or entered into a contract for its conveyance under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other conveyance by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees and costs of the creditor.

(15) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The receivership is governed under chapter 7.60 RCW. During pendency of the action, the court may order the receiver to pay sums held by the receiver to the association for any assessments against the unit. The exercise of rights under this subsection by the association does not affect the priority of preexisting liens on the unit.

(16) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure is not liable for assessments or installments of assessments that became due prior to such right of possession. Such unpaid assessments are deemed to be common expenses collectible from all the

unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior unit owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(17) In addition to constituting a lien on the unit, each assessment is the joint and several obligation of the unit owner of the unit to which the same are assessed as of the time the assessment is due. A unit owner may not exempt himself or herself from liability for assessments. In a voluntary conveyance other than by foreclosure, the grantee of a unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Suit to recover a personal judgment for any delinquent assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(18) The association may from time to time establish reasonable late charges and a rate of interest to be charged, not to exceed the maximum rate calculated under RCW 19.52.020, on all subsequent delinquent assessments or installments of assessments. If the association does not establish such a rate, delinquent assessments bear interest from the date of delinquency at the maximum rate calculated under RCW 19.52.020 on the date on which the assessments became delinquent.

(19) The association is entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in a suit being commenced or prosecuted to judgment. The prevailing party is also entitled to recover costs and reasonable attorneys' fees in such suits, including any appeals, if it prevails on appeal and in the enforcement of a judgment.

(20) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law.

(21) An association may not commence an action to foreclose a lien on a unit under this section unless:

(a) The unit owner, at the time the action is commenced, owes a sum equal to at least three months of common expense assessments; and

(b) The board approves commencement of a foreclosure action specifically against that unit.

(22) Every aspect of a collection, foreclosure, sale, or other conveyance under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

### **SEC. 319. OTHER LIENS.**

(1) In a condominium, plat community, and miscellaneous community:

(a) Except as otherwise provided in (b) of this subsection, a judgment for money against the association perfected under RCW 4.64.020 is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the other real estate of the association and all of the units in the common interest community at the time the judgment was entered. Other property of a unit owner is not subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 314 of this act, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the unit, and the lienholder, upon receipt of payment, must promptly deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio that the unit owner's common expense liability bears to the common expense liabilities of all unit owners that are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association must be recorded and indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

(2) In a cooperative:

(a) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association must promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(b) Whether a unit owner's unit is subject to the claims of the association's creditors, other property of a unit owner is not subject to those claims.

#### **SEC. 320. ASSOCIATION RECORDS.**

(1) An association must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its unit owners and board other than executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;

(c) The names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Financial and other records sufficiently detailed to enable the association to comply with section 409 of this act;

(i) Copies of contracts to which it is or was a party within the last seven years;

(j) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(k) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(l) Copies of insurance policies under which the association is a named insured;

(m) Any current warranties provided to the association;

(n) Copies of all notices provided to unit owners or the association in accordance with this chapter or the governing documents; and

(o) Ballots, proxies, absentee ballots, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(2) Subject to subsections (3) and (4) of this section, all records required to be retained by an association must be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents as follows, unless agreed otherwise:

(a) During reasonable business hours or at a mutually convenient time and location; and

(b) At the offices of the association or its managing agent.

(3) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual unit files other than those of the requesting unit owner;

(i) Unlisted telephone number or electronic address of any unit owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(4) An association may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the unit owner's inspection.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Information provided pursuant to this section may not be used for commercial purposes.

(8) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense.

### **SEC. 321. ASSOCIATION AS TRUSTEE.**

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **SEC. 322. RULES.**

(1) Unless the declaration provides otherwise, the board must, before adopting, amending, or repealing any rule, give all unit owners notice of:

(a) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(b) A date on which the board will act on the proposed rule or amendment after considering comments from unit owners.

(2) Following adoption, amendment, or repeal of a rule, the association must give notice to the unit owners of its action and provide a copy of any new or revised rule.

(3) If the declaration so provides, an association may adopt rules to establish and enforce construction and design criteria and aesthetic standards and, if so, must adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(4) An association's internal business operating procedures need not be adopted as rules.

(5) Every rule must be reasonable.

### **SEC. 323. SPECIFIC LIMITATIONS ON ASSOCIATION'S REGULATORY AUTHORITY.**

(1) An association may not prohibit display of the flag of the United States, or the flag of Washington state, on or within a unit or a limited common element, except that an association may adopt reasonable restrictions pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the association. For purposes of this section, “flag of the United States” means the flag of the United States as described in 4 U.S.C. Sec. 1 et seq. that is made of fabric, cloth, or paper. “Flag of the United States” does not mean a flag, depiction, or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative components.

(2) The association may not prohibit display of signs regarding candidates for public or association office, or ballot issues, on or within a unit or limited common element, but the association may adopt rules governing the time, place, size, number, and manner of those displays.

(3) The association may not prohibit the installation of a solar energy panel on or within a unit so long as the solar panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(4) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; and

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) A unit owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; and

(iii) Unit owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(5) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(6) For purposes of this section, “solar energy panel” means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

- (a) The heating or cooling of a structure or building;
- (b) The heating or pumping of water;
- (c) Industrial, commercial, or agricultural processes; or
- (d) The generation of electricity.

(7) This section must not be construed to permit installation by a unit owner of a solar panel on or in common elements without approval of the board.

(8) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(9) An association may adopt rules that affect the use or occupancy of or behavior in units that may be used for residential purposes, only to:

- (a) Implement a provision of the declaration;
- (b) Regulate any behavior in or occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other occupants; and
- (c) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in comparable common interest communities or that regularly purchase those mortgages.

**SEC. 324. NOTICE.**

(1) Notice to the association, board, or any owner or occupant of a unit under this chapter must be provided in the form of a record.

(2) Notice provided in a tangible medium may be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice.

(a) Notice in a tangible medium to an association may be addressed to the association’s registered agent at its registered office, to the association at its principal office shown in its most recent annual report or provided by notice to the unit owners, or to the president or secretary of the association at the address shown in the association’s most recent annual report or provided by notice to the unit owners.

(b) Notice in a tangible medium to a unit owner or occupant must be addressed to the unit address unless the unit owner or occupant has requested, in a record delivered to the

association, that notices be sent to an alternate address or by other method allowed by this section and the governing documents.

(3) Notice may be provided in an electronic transmission as follows:

(a) Notice to unit owners or board members by electronic transmission is effective only upon unit owners and board members who have consented, in the form of a record, to receive electronically transmitted notices under this chapter and have designated in the consent the address, location, or system to which such notices may be electronically transmitted, provided that such notice otherwise complies with any other requirements of this chapter and applicable law.

(b) Notice to unit owners or board members under this subsection includes material that this chapter or the governing documents requires or permits to accompany the notice.

(c) A unit owner or board member who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the association in the form of a record.

(d) The consent of any unit owner or board member is revoked if: The association is unable to electronically transmit two consecutive notices given by the association in accordance with the consent, and this inability becomes known to the secretary of the association or any other person responsible for giving the notice. The inadvertent failure by the association to treat this inability as a revocation does not invalidate any meeting or other action.

(e) Notice to unit owners or board members who have consented to receipt of electronically transmitted notices may be provided by posting the notice on an electronic network and delivering to the unit owner or board member a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(f) Notice to an association in an electronic transmission is effective only with respect to an association that has designated in a record an address, location, or system to which the notices may be electronically transmitted.

(4) Notice may be given by any other method reasonably calculated to provide notice to the recipient.

(5) Notice is effective as follows:

(a) Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

(b) Notice provided in an electronic transmission is effective as of the date it:

(i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(ii) Has been posted on an electronic network and a separate record of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

(6) The ineffectiveness of a good-faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

(7) If this chapter prescribes different or additional notice requirements for particular circumstances, those requirements govern.

#### **SEC. 325. REMOVAL OF OFFICERS AND BOARD MEMBERS.**

(1) Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present may remove any board member and any officer elected by the unit owners, with or without cause, if the number of votes in favor of removal cast by unit owners entitled to vote for election of the board member or officer proposed to be removed is at least the lesser of

(a) a majority of the votes in the association held by such unit owners or

(b) two-thirds of the votes cast by such unit owners at the meeting, but:

(i) A board member appointed by the declarant may not be removed by a unit owner vote during any period of declarant control;

(ii) A board member appointed under section 305(3) of this act may be removed only by the person that appointed that member; and

(iii) The unit owners may not consider whether to remove a board member or officer at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(2) At any meeting at which a vote to remove a board member or officer is to be taken, the board member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

(3) At any meeting at which a board member or officer is removed, the unit owners entitled to vote for the board member or officer may immediately elect a successor board member or officer consistent with this chapter.

(4) The board may, without a unit owner vote, remove from the board a board member or officer elected by the unit owners if (a) the board member or officer is delinquent in the payment of assessments more than sixty days and (b) the board member or officer has not cured the delinquency within thirty days after receiving notice of the board's intent to remove the board member or officer. Unless provided otherwise by the governing documents, the board may remove an officer elected by the board at any time, with or without cause. The removal must be recorded in the minutes of the next board meeting.

#### **SEC. 326. ADOPTION OF BUDGETS—ASSESSMENTS AND SPECIAL ASSESSMENTS.**

(1)(a) Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. Unless at that meeting the unit owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget and the assessments against the units included in the budget are ratified, whether or not a quorum is present.

(b) If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget proposed by the board.

(2) The budget must include:

(a) The projected income to the association by category;

(b) The projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category;

(c) The amount of the assessments per unit and the date the assessments are due;

(d) The current amount of regular assessments budgeted for contribution to the reserve account;

(e) A statement of whether the association has a reserve study that meets the requirements of section 331 of this act and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and

(f) The current deficiency or surplus in reserve funding expressed on a per unit basis.

(3) The board, at any time, may propose a special assessment. The assessment is effective only if the board follows the procedures for ratification of a budget described in subsection (1) of this section and the unit owners do not reject the proposed assessment. The board may provide that the special assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.

#### **SEC. 327. FINANCIAL STATEMENTS AND ASSOCIATION FUNDS.**

(1) The association must prepare, or cause to be prepared, at least annually, a financial statement of the association in accordance with accrual based accounting practices.

(2) The financial statements of associations with annual assessments of fifty thousand dollars or more must be audited at least annually by a certified public accountant. In the case of an association with annual assessments of less than fifty thousand dollars, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which a majority of the votes in the association are allocated, excluding the votes allocated to units owned by the declarant.

(3) The association must keep all funds of the association in the name of the association with a qualified financial institution. The funds must not be commingled with the funds of any other association or with the funds of any managing agent of the association or any other person, or be kept in any trust account or custodial account in the name of any trustee or custodian.

(4) A managing agent who accepts or receives funds belonging to the association must promptly deposit all such funds into an account maintained by the association as provided in subsection (3) of this section or section 328 of this act, as appropriate.

#### **SEC. 328. RESERVE ACCOUNT—ESTABLISHMENT.**

An association required to obtain a reserve study pursuant to section 330 of this act must establish one or more accounts for the deposit of funds, if any, for the replacement costs of

reserve components. Any reserve account must be an income-earning account maintained under the direct control of the board, and the board is responsible for administering the reserve account.

**SEC. 329. RESERVE ACCOUNT—WITHDRAWALS.**

(1) The board may withdraw funds from the association’s reserve account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the reserve components. Any such withdrawal must be recorded in the minute books of the association. The board must give notice of any such withdrawal to each unit owner and adopt a repayment schedule not to exceed twenty-four months unless the board determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. The board must provide to unit owners along with the annual budget adopted in accordance with section 326 of this act (a) notice of any such withdrawal, (b) a statement of the current deficiency in reserve funding expressed on a per unit basis, and (c) the repayment plan.

(2) The board may withdraw funds from the reserve account without satisfying the notification of repayment requirements under this section to pay for replacement costs of reserve components not included in the reserve study.

**SEC. 330. RESERVE STUDY—PREPARATION.**

(1) Unless exempt under subsection (2) of this section, an association must prepare and update a reserve study in accordance with this chapter. An initial reserve study must be prepared by a reserve study professional and based upon either a reserve study professional’s visual site inspection of completed improvements or a review of plans and specifications of or for unbuilt improvements, or both when construction of some but not all of the improvements is complete. An updated reserve study must be prepared annually. An updated reserve study must be prepared at least every third year by a reserve study professional and based upon a visual site inspection conducted by the reserve study professional.

(2) Unless the governing documents require otherwise, subsection (1) of this section does not apply (a) to common interest communities containing units that are restricted in the declaration to nonresidential use, (b) to common interest communities that have only nominal reserve costs, or (c) when the cost of the reserve study or update exceeds ten percent of the association’s annual budget.

(3) The governing documents may impose greater requirements on the board.

**SEC. 331. RESERVE STUDY—CONTENTS.**

(1) Any reserve study is supplemental to the association’s operating and maintenance budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component, the replacement cost of which exceeds one percent of the annual budget of the association, excluding contributions to the reserves for that reserve component. If one of these reserve components is not included in the reserve study, the study must explain the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, the remaining useful life of each reserve component, and current major replacement costs for each reserve component;

(b) The date of the study and a disclosure as to whether the study meets the requirements of this section;

(c) The following level of reserve study performed:

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

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

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

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance to which the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and a baseline funding plan;

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

(j) A projected reserve account balance for thirty years based on each funding plan presented in the reserve study;

(k) A disclosure on whether the reserve study was prepared with the assistance of a reserve study professional, and whether the reserve study professional was independent; and

(l) A statement of the amount of any current deficit or surplus in reserve funding expressed on a dollars per unit basis. The amount is calculated by subtracting the association's reserve account balance as of the date of the study from the fully funded balance, and then multiplying the result by the fraction or percentage of the common expenses of the association allocable to each unit; except that if the fraction or percentage of the common expenses of the association allocable vary by unit, the association must calculate any current deficit or surplus in a manner that reflects the variation.

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require the association to (1) defer major maintenance, repair, or replacement, (2) increase future reserve contributions, (3) borrow funds to pay for major maintenance, repair, or replacement, or (4) impose special assessments for the cost of major maintenance, repair, or replacement."

**SEC. 332. RESERVE STUDY—DEMAND BY UNIT OWNERS— ACTION TO ENFORCE.**

(1) When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, unit owners of units to which at least twenty percent of the votes in the association are allocated may demand in a record delivered to the board that the cost of a reserve study be included in the next annual budget and that the study be prepared by the end of that budget year. The demand must refer to this section. The board must, upon receipt of the demand, include the cost of a reserve study in the next budget and, if that budget is not rejected by the unit owners pursuant to section 326 of this act, arrange for the preparation of a reserve study.

(2) One or more unit owners may bring an action to enforce the requirements of this section and sections 330 and 331 of this act. In such an action, a court may order specific performance and may award reasonable attorneys' fees and costs to the prevailing party.

(3) A unit owner's duty to pay assessments is not excused because of the association's failure to comply with this section and sections 330 and 331 of this act. A budget ratified by the unit owners pursuant to section 326 of this act is not invalidated because of the association's failure to comply with this section and sections 330 and 331 of this act.

**SEC. 333. RESERVE STUDY—RESERVE ACCOUNT—IMMUNITY FROM LIABILITY.**

Except for an award for attorneys' fees and costs under section 332(2) of this act, monetary damages or other liability may not be awarded against or imposed upon the association or its officers or board members, or upon any person who may have provided advice or assistance to the association or its officers or board members, for failure to: Establish or replenish a reserve account, have a current reserve study prepared or updated in accordance with the requirements of this chapter, or make reserve disclosures in accordance with this chapter.

**IV. PROTECTION OF PURCHASERS**

**SEC. 401. APPLICABILITY—WAIVER.**

(1) Sections 402 through 420 of this act apply to all units subject to this chapter, except as provided in subsections (2) and (3) of this section.

(2) Sections 402 through 420 of this act do not apply in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A conveyance by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A conveyance of all of the units in a common interest community in a single transaction;
- (f) A conveyance to other than a purchaser;
- (g) An agreement to convey that may be canceled at any time and for any reason by the purchaser without penalty;
- (h) A conveyance of a unit restricted to nonresidential uses, except and to the extent otherwise agreed to in writing by the seller and purchaser of that unit.

(3) Sections 414, 415, 416, 417, 419, and 420 of this act apply only to condominiums created under this chapter, and do not apply to other common interest communities.

**SEC. 402. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.**

(1) Except as provided otherwise in subsection (2) of this section, a declarant required to deliver a public offering statement pursuant to subsection (3) of this section must prepare a public offering statement conforming to the requirements of sections 403, 404, and 405 of this act.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a dealer who intends to offer units in the condominium.

(3)(a) Any declarant or dealer who offers to convey a unit for the person's own account to a purchaser must provide the purchaser of the unit with a copy of a public offering statement and all material amendments to the public offering statement before conveyance of that unit.

(b) Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person is not liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared.

(c) The declarant or dealer is liable for any misrepresentation contained in the public offering statement or for any omission of material fact from the public offering statement if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of sections 403, 404, and 405 of this act as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

(5) A declarant is not required to prepare and deliver a public offering statement in connection with the sale of any unit owned by the declarant, or to obtain for or provide to the purchaser a report or statement required under sections 403(1)(oo), 405(1), or 412 of this act, upon the later of:

(a) The termination or expiration of all special declarant rights;

(b) The expiration of all periods within which claims or actions for a breach of warranty arising from defects involving the common elements under section 417 of this act must be filed or commenced, respectively, by the association against the declarant; or

(c) The time when the declarant ceases to meet the definition of a dealer under section 102 of this act.

(6) After the last to occur of any of the events described in subsection (5) of this section, a declarant must deliver to the purchaser of a unit owned by the declarant a resale certificate under section 409(2) of this act together with:

- (a) The identification of any real property not in the common interest community that unit owners have a right to use and a description of the terms of such use;
- (b) A brief description or a copy of any express construction warranties to be provided to the purchaser;
- (c) A statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant arising out of the construction, sale, or administration of any common interest community within the state of Washington within the previous five years, together with the results of the litigation, if known;
- (d) Whether timesharing is permitted or prohibited, and, if permitted, a statement that the purchaser of a time share unit is entitled to receive the disclosure document required under chapter 64.36 RCW; and
- (e) Any other information and cross-references that the declarant believes will be helpful in describing the common interest community to the purchaser, all of which may be included or not included at the option of the declarant.

(7) A declarant is not liable to a purchaser for the failure or delay of the association to provide the resale certificate in a timely manner, but the purchase contract is voidable by the purchaser of a unit sold by the declarant until the resale certificate required under section 409(2) of this act and the information required under subsection (6) of this section have been provided and for five days thereafter or until conveyance, whichever occurs first.

**SEC. 403. PUBLIC OFFERING STATEMENT—GENERAL PROVISIONS.**

- (1) A public offering statement must contain the following information:
  - (a) The name and address of the declarant;
  - (b) The name and address or location of the management company, if any;
  - (c) The relationship of the management company to the declarant, if any;
  - (d) The name and address of the common interest community;
  - (e) A statement whether the common interest community is a condominium, cooperative, plat community, or miscellaneous community;
  - (f) A list, current as of the date the public offering statement is prepared, of up to the five most recent common interest communities in which at least one unit was sold by the declarant or an affiliate of the declarant within the past five years, including the names of the common interest communities and their addresses;
  - (g) The nature of the interest being offered for sale;
  - (h) A general description of the common interest community, including to the extent known to the declarant, the types and number of buildings that the declarant anticipates including in the common interest community and the declarant's schedule of commencement and completion of such buildings and principal common amenities;

- (i) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (j) The number of existing units in the common interest community;
- (k) Brief descriptions of (i) the existing principal common amenities, (ii) those amenities that will be added to the common interest community, and (iii) those amenities that may be added to the common interest community;
- (l) A brief description of the limited common elements, other than those described in section 203 (1)(b) and (3) of this act, that may be allocated to the units being offered for sale;
- (m) The identification of any rights of persons other than unit owners to use any of the common elements, and a description of the terms of such use;
- (n) The identification of any real property not in the common interest community that unit owners have a right to use and a description of the terms of such use;
- (o) Any services the declarant provides or expenses that the declarant pays that are not reflected in the budget, but that the declarant expects may become at any subsequent time a common expense of the association, and the projected common expense attributable to each of those services or expenses;
- (p) An estimate of any assessment or payment required by the declaration to be paid by the purchaser of a unit at closing;
- (q) A brief description of any liens or monetary encumbrances on the title to the common elements that will not be discharged at closing;
- (r) A brief description or a copy of any express construction warranties to be provided to the purchaser;
- (s) A statement, as required under RCW 64.35.210, as to whether the units or common elements of the common interest community are covered by a qualified warranty;
- (t) If applicable to the common interest community, a statement whether the common interest community contains any multiunit residential building subject to chapter 64.55 RCW and, if so, whether:
  - (i) The building enclosure has been designed and inspected to the extent required under RCW 64.55.010 through 64.55.090; and
  - (ii) Any repairs required under RCW 64.55.090 have been made;
- (u) A statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the common interest community of which the declarant has actual knowledge;
- (v) A statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant arising out of the construction, sale, or administration of any common interest

community within the previous five years, together with the results of the litigation, if known;

(w) A brief description of:

- (i) Any restrictions on use or occupancy of the units contained in the governing documents;
- (ii) Any restrictions on the renting or leasing of units by the declarant or other unit owners contained in the governing documents;
- (iii) Any rights of first refusal to lease or purchase any unit or any of the common elements contained in the governing documents; and
- (iv) Any restriction on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale;

(x) A description of the insurance coverage provided for the benefit of unit owners;

(y) Any current or expected fees or charges not included in the common expenses to be paid by unit owners for the use of the common elements and other facilities related to the common interest community, together with any fees or charges not included in the common expenses to be paid by unit owners to any master or other association;

(z) The extent, if any, to which bonds or other assurances from third parties have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 420 of this act;

(aa) In a cooperative, a statement whether the unit owners are entitled, for federal, state, and local income tax purposes, to a pass-through of any deductions for payments made by the association for real estate taxes and interest paid to the holder of a security interest encumbering the cooperative;

(bb) In a cooperative, a statement as to the effect on every unit owner's interest in the cooperative if the association fails to pay real estate taxes or payments due to the holder of a security interest encumbering the cooperative;

(cc) In a leasehold common interest community, a statement whether the expiration or termination of any lease may terminate the common interest community or reduce its size, the recording number of any such lease or a statement of where the complete lease may be inspected, the date on which such lease is scheduled to expire, a description of the real estate subject to such lease, a statement whether the unit owners have a right to redeem the reversion, a statement whether the unit owners have a right to remove any improvements at the expiration or termination of such lease, a statement of any rights of the unit owners to renew such lease, and a reference to the sections of the declaration where such information may be found;

(dd) A summary of, and information on how to obtain a full copy of, any reserve study and a statement as to whether or not it was prepared in accordance with sections 330 and 331 of this act or the governing documents;

(ee) A brief description of any arrangement described in section 123 of this act binding the association;

(ff) The estimated current common expense liability for the units being offered;

(gg) Except for real property taxes, real property assessments and utility liens, any assessments, fees, or other charges known to the declarant and which, if not paid, may constitute a lien against any unit or common elements in favor of any governmental agency;

(hh) A brief description of any parts of the common interest community, other than the owner's unit, which any owner must maintain;

(ii) Whether timesharing is permitted or prohibited, and, if permitted, a statement that the purchaser of a timeshare unit is entitled to receive the disclosure document required under chapter 40 64.36 RCW;

(jj) If the common interest community is subject to any special declarant rights, the information required under section 404 of this act;

(kk) Any liens on real estate to be conveyed to the association required to be disclosed pursuant to section 411(3)(b) of this act;

(ll) A list of any physical hazards known to the declarant that particularly affect the common interest community or the immediate vicinity in which the common interest community is located and which are not readily ascertainable by the purchaser;

(mm) Any building code violation of which the declarant has actual knowledge and which has not been corrected;

(nn) If the common interest community contains one or more conversion buildings, the information required under sections 405 and 412(6)(a) of this act;

(oo) If the public offering statement is related to conveyance of a unit in a multiunit residential building as defined in RCW 64.55.010, for which the final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement either: A copy of a report prepared by an independent, licensed architect or engineer or a statement by the declarant based on such report that describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations of the conversion buildings material to the use and enjoyment of the conversion buildings;

(pp) Any other information and cross-references that the declarant believes will be helpful in describing the common interest community to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant; and

(qq) A description of any age-related occupancy restrictions affecting the common interest community.

(2) The public offering statement must begin with notices substantially in the following forms and in conspicuous type:

(a) "RIGHT TO CANCEL. (1) You are entitled to receive a copy of this public offering statement and all material amendments to this public offering statement before conveyance of

your unit. Under section 408 of this act, you have the right to cancel your contract for the purchase of your unit within seven days after first receiving this public offering statement. If this public offering statement is first provided to you more than seven days before you sign your contract for the purchase of your unit, you have no right to cancel your contract. If this public offering statement is first provided to you seven days or less before you sign your contract for the purchase of your unit, you have the right to cancel, before conveyance of the unit, the executed contract by delivering, no later than the seventh day after first receiving this public offering statement, a notice of cancellation pursuant to section (3) of this notice. If this public offering statement is first provided to you less than seven days before the closing date for the conveyance of your unit, you may, before conveyance of your unit to you, extend the closing date to a date not more than seven days after you first received this public offering statement, so that you may have seven days to cancel your contract for the purchase of your unit.

(2) You have no right to cancel your contract upon receipt of an amendment to this public offering statement; however, this does not eliminate any right to rescind your contract, due to the disclosure of the information in the amendment, that is otherwise available to you under generally applicable contract law.

(3) If you elect to cancel your contract pursuant to this notice, you may do so by hand-delivering notice of cancellation, or by mailing notice of cancellation by prepaid United States mail, to the seller at the address set forth in this public offering statement or at the address of the seller's registered agent for service of process. The date of such notice is the date of receipt, if hand-delivered, or the date of deposit in the United States mail, if mailed. Cancellation is without penalty, and all payments made to the seller by you before cancellation must be refunded promptly."

(b) "OTHER DOCUMENTS CREATING BINDING LEGAL OBLIGATIONS. This public offering statement is a summary of some of the significant aspects of purchasing a unit in this common interest community. The governing documents and the purchase agreement are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel."

(c) "OTHER REPRESENTATIONS. You may not rely on any statement, promise, model, depiction, or description unless it is (1) contained in the public offering statement delivered to you or (2) made in writing signed by the declarant or dealer or the declarant's or dealer's agent identified in the public offering statement. A statement of opinion, or a commendation of the real estate, its quality, or its value, does not create a warranty, and a statement, promise, model, depiction, or description does not create a warranty if it discloses that it is only proposed, is not representative, or is subject to change."

(d) "MODEL UNITS. Model units are intended to provide you with a general idea of what a finished unit might look like. Units being offered for sale may vary from the model unit in terms of floor plan, fixtures, finishes, and equipment. You are advised to obtain specific information about the unit you are considering purchasing."

(e) "RESERVE STUDY. The association [does] [does not] have a current reserve study. Any reserve study should be reviewed carefully. It may not include all reserve components that

will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. You may encounter certain risks, including being required to pay as a special assessment your share of expenses for the cost of major maintenance, repair, or replacement of a reserve component, as a result of the failure to: (1) Have a current reserve study or fully funded reserves, (2) include a component in a reserve study, or (3) provide any or sufficient contributions to a reserve account for a component.”

(f) “DEPOSITS AND PAYMENTS. Only earnest money and reservation deposits are required to be placed in an escrow or trust account. Any other payments you make to the seller of a unit are at risk and may be lost if the seller defaults.”

(g) “CONSTRUCTION DEFECT CLAIMS. Chapter 64.50 RCW contains important requirements you must follow before you may file a lawsuit for defective construction against the seller or builder of your home. Forty-five days before you file your lawsuit, you must deliver to the seller or builder a written notice of any construction conditions you allege are defective and provide your seller or builder the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made by the builder or seller. There are strict deadlines and procedures under state law, and failure to follow them may affect your ability to file a lawsuit.”

(h) “ASSOCIATION INSURANCE. The extent to which association insurance provides coverage for the benefit of unit owners (including furnishings, fixtures, and equipment in a unit) is determined by the provisions of the declaration and the association’s insurance policy, which may be modified from time to time. You and your personal insurance agent should read the declaration and the association’s policy prior to closing to determine what insurance is required of the association and unit owners, unit owners’ rights and duties, what is and is not covered by the association’s policy, and what additional insurance you should obtain.”

(i) “QUALIFIED WARRANTY. Your unit [is] [is not] covered by a qualified warranty under chapter 64.35 RCW. “

(3) The public offering statement must include copies of each of the following documents: The declaration; the survey; the organizational documents; the rules and regulations, if any; the current or proposed budget for the association; a dated balance sheet of the association; any inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090; and any qualified warranty provided to a purchaser by a declarant together with a history of claims under the qualified warranty. If any of these documents are not in final form, the documents must be marked “draft” and, before closing the sale of a unit, the purchaser must be given notice of any material changes to the draft documents.

(4) A declarant must promptly amend the public offering statement to reflect any material change in the information required under this section.

#### **SEC. 404. PUBLIC OFFERING STATEMENT—COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS.**

If the declaration provides that a common interest community is subject to any development rights or if the declarant reserves any special declarant rights, the public offering statement must

include, in addition to the information required under section 403 of this act: (1) A statement of all development rights and special declarant rights reserved to the declarant, together with the dates or other circumstances under which such rights must terminate; and

(2) A statement describing how the allocated interests of a unit may be changed by the exercise of any development right.

**SEC. 405. PUBLIC OFFERING STATEMENT—COMMON INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS.**

(1) A public offering statement for a unit in a conversion building must contain, in addition to the information required under sections 403, 404, and 412(6)(a) of this act:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer or a statement by the declarant based on such report that describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the common interest community;

(b) A statement by the declarant or dealer of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard;

(c) A copy of any inspection and repair report for the conversion building required under RCW 64.55.090, if applicable;

(d) A list of any outstanding notices of uncured violations of building code or other municipal ordinances and regulations, together with the estimated cost of curing those violations and a statement that such list is not a representation that the conversion building is in compliance with the current building code or other municipal ordinances and regulations;

(e) A statement of the improvements to the conversion building made or contracted for by the declarant or dealer, or affiliate of either, offering the unit for sale; and

(f) The current deficiency or surplus in reserve funding expressed on a per unit basis.

(2) The obligation to provide the information required in subsection (1) of this section as to any particular conversion building ceases on the earlier of (a) the date when all units in the building have been conveyed to persons other than the declarant or a dealer, or any affiliate of the declarant or dealer, or (b) the date set forth in section 402(5) of this act.

**SEC. 406. PUBLIC OFFERING STATEMENT—USE OF SINGLE DISCLOSURE DOCUMENT.**

If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of sections 403, 404, and 405 of this act and conforming to any other requirement imposed under such laws may be prepared and delivered in lieu of providing two or more disclosure documents.

**SEC. 407. PUBLIC OFFERING STATEMENT—CONTRACT OF SALE—RESTRICTION ON INTEREST CONVEYED.**

In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed unless otherwise prohibited by applicable law, but interest in that unit may not be conveyed until:

(1) The declaration and map that create the common interest community in which that unit is located are recorded pursuant to sections 201(1) and 210(3) of this act; and

(2) In the case of a unit in a building containing that unit or a building comprising that unit, the unit is substantially completed and available for occupancy, and all structural components and mechanical systems of the building containing or comprising that unit are substantially completed, but a declarant or dealer and a purchaser may otherwise specifically agree in writing as to the extent to which the unit will not be substantially completed and available and to which any structural components and mechanical systems will not be substantially completed at the time of conveyance.

#### **SEC. 408. PURCHASER'S RIGHT TO CANCEL.**

(1) The purchaser may cancel a contract for the purchase of the unit within seven days after first receiving the public offering statement. If the public offering statement is first provided to a purchaser more than seven days before execution of a contract for the purchase of a unit, the purchaser does not have the right under this section to cancel the executed contract. If the public offering statement is first provided to a purchaser seven days or less before the purchaser signs a contract for the purchase of a unit, the purchaser, before conveyance of the unit to the purchaser, may cancel the contract by delivering, no later than the seventh day after first receiving the public offering statement, a notice of cancellation, delivered pursuant to subsection (3) of this section. If the public offering statement is first provided to a purchaser less than seven days before the closing date for the conveyance of that unit, the purchaser may, before conveyance of the unit to the purchaser, extend the closing date to a date not more than seven days after the purchaser first received the public offering statement.

(2) A purchaser does not have the right under this section to cancel a contract upon receipt of an amendment to a public offering statement. This subsection must not be construed to eliminate any right that is otherwise available to the purchaser under generally applicable contract law to rescind the contract due to the disclosure of the information in the amendment.

(3) If a purchaser elects to cancel a contract under subsection (1) of this section, the purchaser may do so by hand-delivering notice of cancellation, or by mailing notice of cancellation by prepaid United States mail, to the declarant at the address set forth in the public offering statement or at the address of the declarant's registered agent for service of process. The date of such notice is the date of receipt of delivery, if hand-delivered, or the date of deposit in the United States mail, if mailed. Cancellation is without penalty, and all payments made to the seller by the purchaser before cancellation must be refunded promptly. There is no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase.

(4) The language of the notice required under section 403(2)(a) of this act must not be construed to modify the rights set forth in this section.

#### **SEC. 409. REALES OF UNITS.**

(1) Except in the case of a sale when delivery of a public offering statement is required, or unless exempt under section 401(2) of this act, a unit owner must furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate,

signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

- (a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;
- (b) With respect to the selling unit owner's unit, a statement setting forth the amount of any assessment currently due, any delinquent assessments, and a statement of any special assessments that have been levied and have not been paid even though not yet due;
- (c) A statement, which must be current to within forty-five days, of any assessments against any unit in the condominium that are past due over thirty days;
- (d) A statement, which must be current to within forty-five days, of any monetary obligation of the association that is past due over thirty days;
- (e) A statement of any other fees payable to the association by unit owners;
- (f) A statement of any expenditure or anticipated repair or replacement cost reasonably anticipated to be in excess of five percent of the board-approved annual budget of the association, regardless of whether the unit owners are entitled to approve such cost;
- (g) A statement whether the association does or does not have a reserve study prepared in accordance with sections 330 and 331 of this act;
- (h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;
  - (i) The most recent balance sheet and revenue and expense statement, if any, of the association;
  - (j) The current operating budget of the association;
- (k) A statement of any unsatisfied judgments against the association and the status of any legal actions in which the association is a party or a claimant as defined in RCW 64.50.010;
- (l) A statement describing any insurance coverage carried by the association and contact information for the association's insurance broker or agent;
- (m) A statement as to whether the board has given or received notice in a record that any existing uses, occupancies, alterations, or improvements in or to the seller's unit or to the limited common elements allocated to the unit violate any provision of the governing documents;
- (n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;
- (o) A statement as to whether the board has received notice in a record from a governmental agency of any violation of environmental, health, or building codes with respect to the seller's unit, the limited common elements allocated to that unit, or any other portion of the common interest community that has not been cured;

(p) A statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal of the leasehold estate;

(q) A statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale;

(r) In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;

(s) A statement describing any pending sale or encumbrance of common elements;

(t) A statement disclosing the effect on the unit to be conveyed of any restrictions on the owner's right to use or occupy the unit or to lease the unit to another person;

(u) A copy of the declaration, the organizational documents, the rules or regulations of the association, the minutes of board meetings and association meetings, except for any information exempt from disclosure under section 320(3) of this act, for the last twelve months, a summary of the current reserve study for the association, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration, or the department of housing and urban development is deemed reasonable if the information is reasonably available to the association;

(v) A statement whether the units or common elements of the common interest community are covered by a qualified warranty under chapter 64.35 RCW and, if so, a history of claims known to the association as having been made under any such warranty;

(w) A description of any age-related occupancy restrictions affecting the common interest community; and

(x) If the association does not have a reserve study that has been prepared in accordance with sections 330 and 331 of this act or its governing documents, the following disclosure: "This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to the payment of any fees imposed pursuant to section 302(2)(m) of this act, must furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed two hundred seventy-five dollars. The association may charge a unit owner a nominal fee not to exceed one hundred dollars for updating a resale certificate within six months of the unit owner's request. A unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(3)(a) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association.

(b) A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

**SEC. 410. ESCROW OF DEPOSITS.**

Any earnest money deposit, as defined in RCW 64.04.005, or any reservation deposit made in connection with the right to purchase a unit from a person required to deliver a public offering statement pursuant to section 402(3) of this act must be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company or agent, a licensed attorney, a real estate broker or independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing, (2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit, (3) refunded to the purchaser, or (4) delivered to a court in connection with the filing of an interpleader action.

**SEC. 411. RELEASE OF LIENS.**

(1) In the case of a sale of a unit when delivery of a public offering statement is required pursuant to section 402(3) of this act and subject to subsection (2) of this section, a seller before conveying a unit:

(a) Must record or furnish to the purchaser releases of all liens that encumber:

(i) In a condominium, that unit and its common element interest; and

(ii) In a cooperative, plat community, or miscellaneous community, that unit and any limited common elements assigned to that unit; or

(b) Must provide the purchaser of that unit with title insurance from a licensed title insurance company against any lien not released pursuant to (a) of this subsection.

(2) Subsection (1) of this section does not apply to liens that encumber:

(a) Real estate that a declarant has the right to withdraw from the common interest community;

(b) In a condominium, the unit and its common element interest being purchased, but no other unit, if the purchaser expressly agrees in writing to take subject to or assume such lien;

(c) In a cooperative, plat community, or miscellaneous community, the unit and any limited common element allocated to the unit being purchased, but no other unit, if the purchaser expressly agrees in writing to take subject to or assume such lien.

(3) Before conveying real property to the association, the declarant must have that real property released from:

(a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and

(b) All other liens on that real property unless the public offering statement describes certain real property that may be conveyed subject to liens in specified amounts.

## **SEC. 412. CONVERSION BUILDINGS—TENANT RIGHTS.**

(1)(a) A declarant or dealer who intends to offer units in a conversion building must give each of the residential tenants and any residential subtenants in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenants in possession are required to vacate. The notice must:

(i) Set forth generally the rights of residential tenants and residential subtenants under this section;

(ii) Be delivered pursuant to notice requirements set forth in 6 RCW 59.12.040;

(iii) Expressly state whether there is a county or city relocation assistance program for residential tenants or residential subtenants of conversion buildings in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion buildings.

(b) A residential tenant or residential subtenant may not be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other residential tenants' or residential subtenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all residential tenants and residential subtenants in a single conversion building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, residential tenants and residential subtenants continue to have access to relocation assistance under subsection (6)(e)(i) of this section.

(d)(i) Nothing in this subsection (1) waives or repeals RCW 35 59.18.200(2)(b).

(ii) Failure to give notice as required under this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in this subsection (1) to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of common interest communities containing conversion buildings in the jurisdiction.

(2)(a) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice must offer to convey each unit or proposed unit occupied for residential use to the residential tenant or residential subtenant who leases that unit. If a residential tenant or residential subtenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one

hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the residential tenant or residential subtenant only if:

(i) Such offeror, by written notice mailed to the residential tenant's or residential subtenant's last known address, offers to sell an interest in that unit at the more favorable price and terms; and

(ii) Such residential tenant or residential subtenant fails to accept the offer in writing within ten days following the mailing of the offer to the tenant or subtenant.

(b) This subsection (2) does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no actual knowledge of the violation, the recording of the deed conveying the unit, or, in a cooperative, the conveyance of the unit, extinguishes any right a residential tenant or residential subtenant may have under subsection (2) of this section to purchase that unit, but does not affect the right of a residential tenant or residential subtenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified under chapter 59.18 RCW.

(5) This section does not permit termination of a lease or sublease by a declarant in violation of its terms.

(6) Notwithstanding section 105 of this act, a city or county may by appropriate ordinance require with respect to any conversion building within the jurisdiction of the city or county that:

(a) In addition to the statement required under section 405(1)(a) of this act, the public offering statement must contain a copy of a written inspection report of that building prepared by the appropriate department of the city or county listing any violations of the housing code or other governmental regulation that is applicable regardless of whether the real property is owned as a common interest community or in some other form of ownership. The inspection must be made within forty-five days of the declarant's written request, and the report must be issued within fourteen days of the inspection being made. The inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months, and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection 19 (6)(a).

(b) Prior to the conveyance of any residential unit within a conversion building, other than a conveyance to a declarant or dealer, or affiliate of either:

(i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by the city or county, must be repaired; and

- (ii) A certification must be obtained from the city or county that such repairs have been made. The certification must be based on a reinspection to be made within seven days of the declarant's written request and be issued within seven days of the reinspection being made;
- (c) The repairs required to be made under (b) of this subsection must be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;
- (d) Prior to the conveyance of any residential unit within a conversion building, other than a conveyance to a declarant or dealer, or affiliate of either:
  - (i) The declarant must establish and maintain, during the one- year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection;
  - (ii) During the one-year warranty period, the funds in the account must be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty;
  - (iii) Following the expiration of the one-year warranty period, any funds remaining in the account must be immediately disbursed to the declarant; and
  - (iv) The declarant must notify in writing the association and the city or county as to the location of the account and any disbursements from the account;
- (e)(i) A declarant must pay relocation assistance, in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the residential tenant's or residential subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to residential tenants or residential subtenants:
  - (A) Who do not elect to purchase a unit in the common interest community;
  - (B) Who are in lawful occupancy for residential purposes of a unit in the conversion building; and
  - (C) Whose annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of:
    - (I) The annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the conversion building is located; or (II) If the conversion building is not within a standard metropolitan statistical area, the annual median income for comparably sized households in the state of Washington, as defined and determined by said department. The household size of a unit must be based on the number of persons actually in lawful occupancy of the unit. The residential tenant or residential subtenant actually in lawful occupancy of the unit is entitled to the relocation assistance. Relocation assistance must be paid on or before the date the residential tenant or residential subtenant vacates and is in addition to any damage deposit or other

compensation or refund to which the residential tenant or residential subtenant is otherwise entitled. Unpaid rent or other amounts owed by the residential tenant or residential subtenant to the landlord may be offset against the relocation assistance.

(ii) Elderly residential tenants or residential subtenants and residential tenants or residential subtenants with special needs who otherwise meet the requirements of (e)(i)(A) of this subsection must receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the residential tenant or residential subtenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the residential tenant or residential subtenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible residential tenants or residential subtenants, and declarants must provide the relocation assistance to residential tenants or residential subtenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance.

(iii) For the purposes of this subsection (6)(e):

(A) "Elderly" means a person who is at least sixty-five years of age; and

(B) "Special needs" means a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self-care;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer may not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to become a conversion building during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit in the common interest community and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of establishing or selling units in a conversion building, and does not mean the work that is done to maintain the building or lot for the residential use of the existing residential tenants or residential subtenants; and

(ii) "Occupied building" means a stand-alone structure occupied by residential tenants or residential subtenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing residential tenants or residential subtenants an option to terminate an existing lease or rental agreement without cause or consequence as

authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building; (B) to repair or remodel a vacant unit or common element for use as a sales office; or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the residential tenants' or residential subtenants' rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized under subsection (6) of this section gives rise to such remedies, penalties, and causes of action that may be lawfully imposed by the city or county. Such violations do not invalidate the creation of the common interest community or the conveyance of any interest in the common interest community.

#### **SEC. 413. CONVERSION COMMON INTEREST COMMUNITY PROJECT—REPORT.**

(1) All cities and counties planning under RCW 36.70A.040, which have inspected any conversion buildings or managed the payment of relocation assistance within the jurisdiction within the previous twelve-month period, must report annually to the department of commerce the following information:

- (a) The total number of apartment units converted into common interest community units;
- (b) The total number of conversion common interest community projects; and
- (c) The total number of residential tenants and residential subtenants who receive relocation assistance.

(2) Upon completion of a conversion common interest community project, a city or county may require the declarant to provide the information described in subsection (1)(a) and (c) of this section for the converted common interest community to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section.

#### **SEC. 414. EXPRESS WARRANTIES OF QUALITY.**

(1) Subject to subsections (2) and (3) of this section, express warranties made by any declarant or dealer to a purchaser of a unit in a condominium, if relied upon by the purchaser in purchasing the unit, are created as follows:

- (a) Any written affirmation of fact or written promise that relates to the unit, its use, or rights appurtenant to the unit or its use, improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will not materially deviate from the affirmation or promise.
- (b) Any written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the written description in all material respects.

(c) Any written description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances.

(d) A written statement that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Subject to subsection (3) of this section, neither formal words, such as “warranty” or “guarantee,” nor a specific intention to make a warranty are necessary to create an express warranty, but a statement of opinion or a commendation of the real estate, its quality, or its value does not create a warranty, and a statement, promise, model, depiction, or description does not create a warranty if it discloses that it is only proposed, is not representative, or is subject to change.

(3) A purchaser may not rely on any statement, affirmation, promise, model, depiction, or description unless it is contained in the public offering statement delivered to the purchaser or made in a record signed by the declarant or dealer, or the declarant’s or dealer’s agent identified in the public offering statement.

(4) Any conveyance of a unit transfers to the purchaser all §express warranties of quality made by the declarant or dealer.

#### **SEC. 415. IMPLIED WARRANTIES OF QUALITY.**

(1) A declarant and any dealer warrants to a purchaser of a condominium unit that the unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, except for reasonable wear and tear and damage by casualty or condemnation. (2) A declarant and any dealer impliedly warrants to a purchaser of a condominium unit that the unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a condominium unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed under this section may be excluded or modified as specified in section 416 of this act.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(6) Any conveyance of a condominium unit transfers to the purchaser all of a declarant’s or dealer’s implied warranties of quality.

(7)(a) In a proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach.

(b) As used in this subsection, an adverse effect must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the reasonable cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, damages are limited to the loss in market value.

#### **SEC. 416. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY.**

(1) Except as limited under subsection (2) of this section with respect to a purchaser of a condominium unit that may be used for residential use, implied warranties of quality under section 415 of this act:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as “as is,” “with all faults,” or other language that in common understanding calls the buyer’s attention to the exclusion of warranties.

(2) With respect to a purchaser of a condominium unit that may be used for residential use, no disclaimer of implied warranties of quality under section 415 of this act is effective, except that a declarant and any dealer may disclaim liability in an instrument for one or more specified defects or failures to comply with applicable law, if:

(a) The declarant or dealer knows or has reason to believe that the specific defects or failures exist at the time of disclosure;

(b) The disclaimer specifically describes the defects or failures;

(c) The disclaimer includes a statement as to the effect of the defects or failures;

(d) The disclaimer is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous; and

(e) The disclaimer is signed by the purchaser.

(3) A declarant or dealer may not make an express written warranty of quality that limits the implied warranties of quality made to the purchaser set forth in section 415 of this act.

#### **SEC. 417. WARRANTIES OF QUALITY—BREACH—ACTIONS FOR CONSTRUCTION DEFECT CLAIMS.**

(1) A proceeding for breach of any obligations arising under section 414, 415, or 416 of this act must be commenced within four years after the cause of action accrues. The period for commencing an action for a breach accruing pursuant to subsection (2)(a) of this section does not expire prior to one year after termination of the period of declarant control, if any, under section 304 of this act. Such periods may not be reduced by either oral or written agreement or through

the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the latest of:

(i) The date the unit was conveyed to the purchaser to whom the warranty is first made; or

(ii) The date any portion of the unit that constitutes a building enclosure as defined in RCW 64.55.010(3) was completed; and

(b) As to each common element, at the latest of:

(i) The date the common element was completed;

(ii) The date the common element was added to the condominium; or

(iii) The date the first unit in the condominium was conveyed to a bona fide purchaser.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

#### **SEC. 418. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION —ATTORNEYS' FEES.**

(1) A declarant, association, unit owner, or any other person subject to this chapter may bring an action to enforce a right granted or obligation imposed under this chapter or the governing documents. The court may award reasonable attorneys' fees and costs.

(2) Parties to a dispute arising under this chapter or the governing documents may agree at any time to resolve the dispute by any form of binding or nonbinding alternative dispute resolution.

#### **SEC. 419. LABELING OF PROMOTIONAL MATERIAL.**

Promotional material may not be displayed or delivered to prospective purchasers of a condominium unit that describes or portrays an unbuilt contemplated improvement in the condominium unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT" or words to that effect.

#### **SEC. 420. IMPROVEMENTS—DECLARANT'S DUTIES.**

(1) Except for improvements labeled "NEED NOT BE BUILT" on the map in conformity to section 210(9) of this act, the declarant must complete all improvements depicted on the map or other graphic representation of a condominium, if the map or other graphic representation is

contained in the public offering statement or in any promotional material approved or authorized by the declarant with respect to the condominium.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created under sections 211 through 217 of this act.

## V. MISCELLANEOUS

### SEC. 501.

RCW 6.13.080 and 2013 c 23 s 2 are each amended to read as follows:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, material supplier's, or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership;

(3) On one spouse's or one domestic partner's or the community's debts existing at the time of that spouse's or that domestic partner's bankruptcy filing where (a) bankruptcy is filed by both spouses or both domestic partners within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse or other domestic partner exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay maintenance;

(5) On debts owing to the state of Washington for recovery of medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p;

(6) On debts secured by ~~((a condominium's or homeowner))~~ an association's lien ~~((-In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an~~

~~association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection)); or~~

(7) On debts owed for taxes collected under chapters 82.08, 82.12, and 82.14 RCW but not remitted to the department of revenue.

**SEC. 502.**

A new section is added to chapter 59.18 RCW to read as follows:

This chapter does not apply to any proprietary lease as defined in section 102 of this act:

(1) Created after the effective date of this section; or

(2) If the lessor has amended its governing documents to provide that chapter 64.--- RCW (the new chapter created in section 506 of this act) will apply to the common interest community pursuant to section 120 of this act.

**SEC. 503.**

A new section is added to chapter 64.32 RCW to read as follows:

This chapter does not apply to common interest communities as defined in section 102 of this act:

(1) Created after the effective date of this section; or

(2) That have amended their governing documents to provide that chapter 64.--- RCW (the new chapter created in section 506 of this act) will apply to the common interest community pursuant to section 120 of this act.

**SEC. 504.**

A new section is added to chapter 64.34 RCW to read as follows:

This chapter does not apply to common interest communities as defined in section 102 of this act:

(1) Created after the effective date of this section; or

(2) That have amended their governing documents to provide that chapter 64.--- RCW (the new chapter created in section 506 of this act) will apply to the common interest community pursuant to section 120 of this act.

**SEC. 505.**

A new section is added to chapter 64.38 RCW to read as follows:

This chapter does not apply to common interest communities as defined in section 102 of this act:

(1) Created after the effective date of this section; or

(2) That have amended their governing documents to provide that chapter 64.--- RCW (the new chapter created in section 506 of this act) will apply to the common interest community pursuant to section 120 of this act.

**SEC. 506.**

Sections 101 through 420 of this act constitute a new chapter in Title 64 RCW. Sec. 507. This act takes effect July 1, 2018.”

Correct the title.

EFFECT: Retains the underlying bill with the following changes:

- (1) Amends section 120 of the act with respect to the opt-in procedure for amending the governing documents of an existing common interest community (CIC) to provide that the CIC will be governed by the new WUCIOA chapter, setting forth a step-by-step process regarding who can propose/request, preparation of the amendment, notices, meeting, and votes required.
- (2) Amends Section 318 (Lien for Sums Due Association - Enforcement) to: Add a provision that an association’s lien for unpaid assessments does not affect the priority of mechanics’ or material suppliers’ liens to the extent that the law of this state other than WUCIOA gives priority to such liens, or the priority of liens for other assessments made by the association; clarify the priority when two or more associations have liens for assessments created at any time on the same property; strike the provision that an association must give notice required by statute, or if not specified, reasonable notice, to lienholders; strike the provision that specified the order in which associations must apply any sums paid by unit owners who are delinquent in paying assessments; and add a provision that every aspect of a collection, foreclosure, sale, or other conveyance under section 318 must be commercially reasonable.
- (3) Makes changes in warranty sections 415-417 of the act to: Refer to “proceedings” rather than “judicial proceedings;” use the term “disclaimer” rather than “instrument;” and strike redundant language requiring a signature by the purchaser.
- (4) Rewords sections 503-505 of the act regarding when current law governing CICs applies/does not apply, providing that current chapters do not apply to: CICs created after the effective date of the act or to CICs that have amended their governing documents to provide that the new WUCIOA chapter applies. Similarly rewords section 502 of the act regarding proprietary leases and the application of the Residential Landlord Tenant Act (RLTA).
- (5) Corrects a statutory reference to the RLTA.