

CHAPTER 1

BASIC LEGAL CONCEPTS AND INFORMATION: WASHINGTON CONDOMINIUM ASSOCIATIONS.

“Condominium” refers to real property developments in which the property can be divided by lines on the ground like traditional real estate, but can also be divided with horizontal planes, like the floors of a building. The individual owners also each own an undivided (collective) interest in the common areas (i.e. offices, lobbies, elevators, hallways, parking garages, pools, etc.) Condominiums require a certain relinquishment of autonomy by owners in exchange for management services and the advantages of belonging to a community defined by specific rules. This book is geared towards condominium associations, but much of it will also apply to other types of homeowners associations. The unit (or apartment) is a separate piece of property within the whole. A carton of eggs is an excellent analogy for the condominium structure. Each egg is a unit with a defined boundary. The carton is all the common elements surrounding and between the eggs.

Hierarchy of Governance

A condominium is regulated by several layers of written documents. The documents are enforceable in a specific hierarchy. Lower levels (i.e., rules) are not enforceable if they conflict with upper levels (i.e., declaration). Lower levels are enforceable if they are consistent (do not conflict) with the upper levels, and if they were adopted in compliance with the upper levels. Top to bottom they are: Federal law; State law (RCW); your Declaration of Condominium; your bylaws; and your Rules and Regulations.

Take, for example, satellite dishes. They are governed by Federal law, the FCC, and cannot be regulated by your board in a way that conflicts with FCC rulings. Another example is that your Declaration or Bylaws cannot set out provisions for member voting that are prohibited by the State non-profit corporation act to the extent that the non-profit corporation act sets out rules for member voting. A last example: you can not adopt a rule that takes away traditional property rights from owners when your Declaration is silent about those rights; such as a rule prohibiting renting units. A rule that affects a substantive property right likely needs to be adopted through a declaration amendment.

Know Which Laws Apply.

Condominium owners give up the ability to individually exercise the rights of single family home owners in many of the decisions about their property in exchange for the benefits of living in a community that has a more homogenous appearance and behavior, efficiencies in cost, and lower maintenance by the individual.

Condominiums and their owners’ associations created after July 1, 1990, (meaning the declaration was filed on or after that date) are governed by the Washington Condominium Act, RCW 64.34 (the “New Act”). Condominium owners associations that were created before July

1, 1990, are generally governed by the Horizontal Property Regimes Act, RCW 64.32 (the “Old Act”).

But parts of the New Act also apply to older condominiums. Any condominium association formed as a corporation, including “New Act” condominiums are also governed by the Non-profit Corporations Act, RCW 24.03, or the Nonprofit Miscellaneous and Mutual Corporations Act, RCW 24.06. To a certain extent, these acts also implicate application of the Business Corporations Act. Other state laws will apply to some situations, such as the Landlord Tenant Act if a renter is involved. And federal laws like the Fair Debt Collection Practices Act will apply to an association’s collection activity. Homeowners’ associations other than condominiums are governed by the Homeowners’ Association Act, RCW 64.38.

Articles of Incorporation.

Articles of incorporation are the official documents by which the Secretary of State of Washington creates a Washington corporation. A corporation is a legally distinct entity (a “person”) created by law. It has rights, can own property and can be sued. Most condominium associations are corporations. In fact, all condominium associations created after July 1, 1990, are required by law to be a non-profit corporation and you should confirm that your association was incorporated when it was created. If your condominium association pre-dates July 1, 1990, we still suggest you confirm that you are incorporated. Check to see if you are incorporated by calling the WA Secretary of State’s Office at (360) 753-7115 or go to <https://www.secstate.wa.gov/corps/>. If your association is not incorporated, we recommend incorporating as soon as possible. While articles of incorporation may be necessary to form the corporation, they don’t often affect how an association conducts its activities.

Declaration and Bylaws

When a condominium is created, the person who created the condominium (the “Declarant”) makes and records a “Declaration”. It is a document in some ways analogous to a constitution that sets down the rights and obligations of the owners. The Declaration is recorded at the county recorder’s office in which the property is located. Bylaws are rules that relate to the administrative operation of the association. This document should be adopted when the corporation is formed but is not recorded anywhere. These are the core documents that make up the association’s governing documents. Other kinds of owners’ associations may have “CC+Rs” or other restrictive covenants that affect the rights and activities of the association.

Rules and Regulations

Rules and regulations (also called “House Rules”, “Community Guidelines”, etc..) are the lowest level in the hierarchy of governing documents. Rules and regulations are usually adopted originally by the Association as a whole and then later amended as necessary or prudent. These are also part of the association’s governing documents

The rules and regulations govern day to day living such as where you can park your car, when to observe quiet hours, what to do if you have a noisy neighbor, and what the fines are if an

owner does not obey the rules. Rules and regulations are intended to fill holes purposely left in the Declaration and Bylaws and often change over time as the community changes.

For example, your declaration may have a broadly written provision about pets that gives the board the authority to adopt more specific rules. Over time a board may adopt rules that limit the number or type of animals that may be kept in a unit, and those rules might change as different owners and board members come and go in the community.

Statutes of Limitations.

With the passage of time, many legal rights expire. Your right to sue someone doesn't last forever. For example, a unit owner's right to legally challenge an association board's decision might be barred after one year. The right of a condominium association to sue a developer for construction defects may expire at four years. If you are concerned about legal claims that your association may have, consult an attorney to ensure that the statute of limitations does not bar your claims.

