

CONDOMINIUM COMMON SENSE

A HANDBOOK FOR
WASHINGTON STATE CONDOMINIUMS

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This book is not a substitute for advice from qualified professionals about a specific condominium or a specific situation facing a condominium. While there are many similarities between condominiums, and declarations are often formulaic in their preparation, without reviewing the specific governing documents for your association, we cannot give competent advice about any situation that you may face.

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We are also grateful to the condominium board members we have worked with over the last seven years who have demonstrated outstanding commitment to their associations in the contribution of their time and energy to the governance of their condominium associations. It is this kind of commitment that has inspired us to write this book in an effort to help them and others in the unappreciated task of serving on their board of directors.

This is the first publishing of this book, and is being distributed to our clients, friends, and members of CAI. We would appreciate feedback from our readers about the book's content and format. If you have suggestions that would make this a more valuable tool for your use, or for other condominium owners and board members, we would appreciate your contacting us with your comments.

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INTRODUCTION

Running a condominium association can be complicated and carries a lot of responsibility. As a volunteer or elected director of a condominium association, there are bound to be areas in which you would appreciate some guidance. This book is not a how-to guide for all topics related to running an association, but it is a selection of topics we believe associations would find useful and informative. Many of the chapters were written after we sat down and asked ourselves, “What topics keep coming up with our clients over and over again?” We also included some skills and knowledge that we think all association directors should have but often do not. Some of these topics have been published previously as separate magazine articles.

We have tried to keep the chapters short in length using as much plain English as possible. We realize that not even lawyers like reading legalese. There was, however, a necessity to include certain legal concepts because many of the duties and concerns that you are likely to encounter as a director are legal in nature. Some topics won't apply to your condominium. Skip those. Each topic is intended to be useful standing alone, but some are complimentary. We recommend reading the legal concepts chapter first.

As you read this book, please be mindful that it is very general. It is not intended to replace legal advice from an attorney. Remember that your association is unique and that the options and issues you have depend on the circumstances before you and on your specific governing documents.

If you should desire legal advice on these or other areas of law pertaining to a condominium in Washington State, Condominium Law Group, PLLC would be happy to help.

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Resources for More Information:

Condominium Law Group, PLLC

<http://www.condolaw.net>

10310 Aurora Ave N.

Seattle, WA

206-633-1520

Community Association Institute

<http://www.caionline.org/>

225 Reinekers Lane

Suite 300

Alexandria, VA 22314

Community Association Institute – Washington Chapter

<http://www.wscail.org/>

19101 36th Avenue W Ste. 205

Lynnwood, WA

Attorney Bar Associations

King County Bar Association

<http://www.kcba.org/>

Snohomish County Bar Association

<http://www.snobar.org/>

Tacoma-Pierce County Bar Association

<http://www.tpcba.com/>

Washington State Bar Association

<http://www.wsba.org/>

Governmental agencies

Washington Secretary of State

<https://www.secstate.wa.gov/>

(For corporations) <https://www.secstate.wa.gov/corps/>

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Washington Department of Labor and Industries

<http://www.lni.wa.gov/>

(To look up Licensed Contractors)

<http://www.lni.wa.gov/TradesLicensing/Contractors/HireCon/>

Washington Licensing Query Website

<https://fortress.wa.gov/dol/dolprod/profquery/>

County Recorder's Office / County Auditor's Office

King County <http://www.metrokc.gov/recelec/records/>

Pierce County <http://hartweb.co.pierce.wa.us/>

Snohomish County

<http://www1.co.snohomish.wa.us/Departments/Auditor/>

WA State Law - Revised Code of Washington (RCW)

<http://apps.leg.wa.gov/RCW/>

Horizontal Property Regimes Act ("The Old act") - RCW 64.32

Washington Condominium Act ("The New Act") - RCW 64.34

Washington Nonprofit Corporations Act - RCW 24.03

Nonprofit Miscellaneous and Mutual Corporations Act- RCW 24.06

Homeowners' Association Act - RCW 64.38

Washington Business Corporations Act - RCW 23B

FCC Information

Page for the Preemption of Restrictions on Placement of
Satellite Dishes and Antennas

<http://www.fcc.gov/mb/facts/otard.html>

Parliamentary Sources:

Roberts Rules of Order Newly Revised:

<http://www.robertsrules.com/>

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CHAPTER 1 – BASIC LEGAL CONCEPTS

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

CHAPTER 1 – BASIC LEGAL CONCEPTS

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.

CHAPTER 2 – BEST PRACTICES

CHAPTER 2

BEST PRACTICES FOR RUNNING AN ASSOCIATION

We are frequently asked how boards should conduct themselves to fulfill their obligations. Our recommendations are:

Awareness

Read your governing documents and follow them. The first thing that any director of a condominium association should do is read the Declaration, Bylaws, Rules and Regulations, and/or CC&Rs that make up the association's governing documents. A director's duty is to comply with and enforce the rules contained in these documents. These documents will outline some specific duties such as arranging for annual CPA audits and acquiring liability insurance. Some of these regulations are actually restatements of obligations that the association has under state law. As you perform your duties, continue to consult the governing documents for guidance.

Be aware of your community. Some people drive into their garage, walk from their car into their home and never venture beyond their unit. They do not know if there is mold forming on the outside of their building, if the gutters have fallen off, or if their next door neighbor has fifteen cats. This should not be you. Know your neighbors and residents. Look at the buildings. Examine the Balance Sheets and Financials. As a director, you have both a duty to yourself and the association to have a general awareness of the building(s), the community, and the financial condition of your association.

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Good Communications

Give notice of meetings. The law requires you to give notification of all meetings. Keep a copy of each notice, to whom it was sent and how it was sent. List the planned topics of discussion in the notice, perhaps by providing an agenda.

Communicate with the owners. Ask people what they think is needed. Keep the unit owners informed about important matters other than the meetings. For example, inform them when the parking lot gate will be out of service for scheduled maintenance. It will then be harder to blame the board if they are inconvenienced.

Put it in writing. Convey important information in writing. Keep meeting minutes. Write newsletters, e-mails or letters. Post to a bulletin board or an association web-site. Distribute minutes from association meetings either on paper or electronically. If there is no written record, then it never happened. Keep records for a reasonable period of time. Different records must be kept for different periods of time, so it may be wise to ask your property manager or attorney about a record retention policy.

It may be helpful for the association to adopt a process for creating and keeping records. For example, if the association has a meeting minute book, adopt a practice for making sure the approved meeting minutes are signed and, along with any important attachments, are put into the book after each meeting. Correspondence with owners, financial records and other important documents can also be preserved in the book. It's not enough to know that a writing exists somewhere; you must also be able to find that writing when you need it.

Property managers may be able to collect much of the correspondence, but the obligation is on the Board to make sure that it is done adequately. Printed copies of e-mail communications may assist in keeping a record of what has happened in the past, but remember that only the approved

CHAPTER 2 – BEST PRACTICES

minutes reflect what the Board or the Association has actually done.

Run Your Meetings Properly

Conduct meetings according to a set agenda. Whether or not you're required by law or the bylaws of your association to prepare a meeting agenda, do so anyway. It makes taking minutes easier, helps deal with matters in an orderly manner and ensures that issues are not forgotten. Keep a copy of the agenda in the record.

Keep good minutes. Minutes are the recorded history of the proceedings of your association and should accurately summarize the topics discussed and the decisions made at meetings. They should not be overly verbose, but you want a reader to understand how the association arrived at decisions. Minutes should contain records of all motions, nominations, votes and actions taken. Minutes and supporting documents like reports from the property managers and consultants are the paper trail that will support you if someone accuses you of acting unreasonably.

Don't conduct association business outside of meetings. Important issues are best discussed and voted on at meetings. It allows for people's opinions to be swayed by debate and ensures that all the voters have the relevant information. Meetings can be called on very short notice if necessary. Failing to hold meetings for votes on important matters has the potential to create numerous problems.

A less desirable alternative that may be available to associations that do not have open-meeting requirements is to conduct a vote of the board by e-mail. This is less preferable since less debate is likely to occur this way, but if all members are unanimous on an issue, it may solve scheduling problems. If an e-mail vote happens, those e-mails should be printed and entered into the record of the association. Best practice would be to ratify the e-mail vote at the next regular meeting.

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Budget & Plan for the Future

Make a budget and keep to it. Many associations run into difficulties because they do not budget wisely or because they fail to keep to their budget. The main operating account of the association should have enough to pay for all anticipated expenses and some amount of *unanticipated* ones, too. When energy prices went up recently, many associations were not prepared to deal with the large increase in utility costs. Many associations don't have adequate operating reserves to pay the insurance deductible in the event of a fire or water leak. An association should never have to levy a special assessment for basic monthly expenses such as utilities. Well run associations have adequate reserves in their operating accounts for normal expenses and in their maintenance reserve accounts for major repairs to the buildings.

Your governing documents may have requirements for a budget. Once your board approves the budget, make reasonable efforts to adhere to it. You may have a duty to provide a budget summary to members after that proposed budget is approved by the board. See RCW 64.34.308(3). Good communication dictates providing the budget to all owners no matter what.

Keep track of the money. The Washington Condominium Act requires that associations have sufficient financial records to comply with generally accepted accounting principles. Condominium associations need to have an annual CPA audit if there are fifty or more units. RCW 64.34.372. Even though smaller associations have the option to vote and waive the audit, make sure that if an audit *were* to be done, the financial records would be in order. If you choose not to obtain an audit, make sure you appropriately document the vote by owners of that decision.

Don't allow the association's reserves to go dry. It is becoming common to have professional reserve projections for

CHAPTER 2 – BEST PRACTICES

major maintenance produced so that associations can plan for large expenditures years in advance; typically called a “Reserve Study”. This is a good idea because it gives a professional opinion on the condition of the buildings and upcoming major expenses. Don’t use these reserves to make discretionary expenditures like lobby remodels or security system upgrades that will leave the association’s reserves inadequately funded.

Good Decision-making

Directors are meant to Direct. Being passive is not what association directors are elected for. Boards must be aware of what is going on with the association. Failure to take actions that are needed may result in harm to your association and liability to you. Sometimes doing nothing is the right course of action, but in those circumstances you need to *decide* that inaction is the best course and document that decision.

Get outside advice when you need it. Association directors are often called upon to make decisions in areas of expertise that they are unfamiliar with. Being elected by your neighbors to run things does not mean that you automatically have knowledge of accounting, construction, etc. Courts have found that adequate investigations and information are necessary in order for actions to be considered reasonable. If you know you are not competent to evaluate structural damage to a building, the logical thing to do is to get someone who *is* qualified to advise you and make recommendations. Then you can make an informed decision.

Don’t let important matters wait. If informed of safety issues, budget shortfalls, or other issues in the common areas, you should endeavor to be as proactive as possible and to attend to any concerns in an appropriate manner.

Enforcing Rules

Be consistent in enforcement. When enforcing the rules in your association, treat everyone equally. Selective enforcement

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may lead to the waiver of a rule or to liability for you personally and for the association.

Balance free use and enjoyment. There needs to be a balance between the free use and enjoyment of one's own property and the rights of one's neighbors not to be bothered by those activities. One of the functions of a condominium association is to help ensure that neighbors act in accordance with rules that everyone agreed to when they purchased. (The Declaration, Bylaws and Rules & Regulations.) It is your job to find and enforce that balance, with the use of the governing documents and input from your community.

Seek compromise. Enforcing rules just for the sake of enforcing rules neither endears you to the owners nor protects you and the association from liability. If an owner makes a reasonable request for an exception to a rule and there is no particular reason for refusing the request other than the existence of the rule, try to be accommodating. Sometimes a compromise will avoid costly legal expense later on. It may also preserve good relations among neighbors which is always a positive result.

CHAPTER 3 – CONDOMINIUMS ARE MULTI-FAMILY

CHAPTER 3

CONDOMINIUMS ARE MULTI-FAMILY HOUSING

When you own a condominium you own a piece of real estate, which makes you different from a renter. But most condominiums are a way of living that is more like living in an apartment than many owners expect. Examples:

- You are subject to many rules on how you decorate your home, just like a renter.
- You are living in close quarters, often sharing walls, floors and ceilings with other residents of the community.
- You will hear noise from the activities of your neighbors living in their units.
- The noise you make will be heard by your neighbors.
- You will pay for expenses that you would not choose to incur if given the option.
- You will have limited parking and storage space.
- Someone else will decide how the landscaping looks.

Ways in which you are not like apartment renters are:

- You will pay the full cost of all repairs and maintenance for the building.
- You will receive the appreciation in value of the real estate.
- You are a voting member of an association or corporation that owns the buildings.
- You can serve on the Board to influence decisions if you choose to (and can get elected).

Your condominium is a neighborhood and community. Just as you may be annoyed by the activities of your neighbors, you

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have an obligation to be mindful of the impact you have on your neighbors' lives. You need to be considerate of the noise you make, the cigarette smoke your guests create, the appearance of your decks, etc. And you should at least consider talking to your neighbors when you are going to engage in some activity that may bother them (like a party) or when they are behaving in a way that bothers you. They may not know your sleep schedule and may not be aware that they are disturbing you.

RULES RULES RULES

You are part of a democracy of unit owners that governs your building and way of life, just like a small government. The rules of that small government are often very detailed, and contained in documents that are recorded with the property. These rules are embodied in the declaration, bylaws, and regulations adopted by your association. Most owners have never read the declaration, bylaws or rules & regulations for their condominium. Most buyers will purchase their piece of real estate without reading or understanding what may be hundreds of pages of detailed rules about how the condominium will be operated, and how things must be done.

Whether or not you read and understood those governing documents, you are bound by them. Whether or not they are fair is generally not considered, even by the courts, because they are the rules that you agreed to live by when you purchased your unit. Some of the rules may be in violation of state or federal law, and those may be unenforceable, but rules related to how space is used, how expenses are shared, powers of the board of directors, etc. will be presumed fair and reasonable in most cases. If you are unhappy with those rules, you may be able to change some of them with a vote of the owners, but some changes require a 100% vote of the owners. And for many "unfair" rules, such as how expenses are shared between units, any change that benefits one

CHAPTER 3 – CONDOMINIUMS ARE MULTI-FAMILY

unit will necessarily harm some other unit, so getting 100% to agree on a change is virtually impossible.

The flip side of this is that it is impossible for your association to get compliance from every owner for every rule all of the time. Rules about parking, garbage, pets, political signs, material stored on decks, and other rules are difficult to enforce with 100% compliance, even by a diligent board. Many people are simply ignorant of the rules. Others think they are complying when they are not. Others don't understand how it matters if they comply or not, and sometimes they are right.

Your association should make reasonable efforts to enforce the rules, but sometimes we advise associations that a violation is not significant enough to warrant the enforcement effort or the expense of enforcement. If the violation is not causing any harm to any person (for example a pet slightly over the weight allowed), and no other owner is bothered, there is little point. While you may want to live in an orderly community, you probably don't want the "condo police" inspecting everything you do and comparing it to the rules. The expense of enforcement is something that is shared by the owners and should be balanced against the expected benefit.

Condominiums are Not Appropriate for All People

Many people do not have lifestyles or temperaments that make condominium life suitable for them. We urge these people to find more suitable housing. Condominiums are often purchased as entry level homes by people that cannot afford the single family homes they really want. Others are purchased by people downsizing or looking to have a home that is "maintenance free". They are often disappointed when they realize how much they value the independence and distance that they enjoyed in their detached single family home.

Condominiums are not noise free. If you share walls with neighbors, you are likely to hear them. If you have floors above,

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you will hear your upstairs neighbors moving around, and will probably hear the plumbing when the upstairs neighbors flush the toilets or run faucets. Even properly constructed condominiums are still multi-family housing, and occasionally you and your neighbors will hear each other; maybe all of the time for some units in some buildings.

Condominiums are not maintenance free, nor do they manage themselves. Even if you have a property manager for the association, the board, which is made up of unit owners, has to make many decisions about how the condominium is run. This includes decisions about how and when major repairs and maintenance for the condominium are done and how to pay for those costs. Often associations do not have enough money to pay for work that must be done and a special assessment is necessary. Remember that the board is no happier about this situation than any other unit owner and as owners the board members have to pay too.

If you don't want to live by the rules and decisions of your neighbors, then you need to be on the board of directors for your association. That is the only way to be certain that the board at least considers doing those things that you consider important. (But you are only one voice on the board, and the rest of them may not agree with you).

The benefits of living in a condominium community often outweigh the costs, but there is no question that condominium living requires compromise and is not for everyone. People should consider the way the community is built and the rules they will have to live by *before* buying into a condominium.

CHAPTER 4 – MISTAKES YOU CAN AVOID

CHAPTER 4

MISTAKES YOU CAN AVOID IN OVERSEEING YOUR CONDOMINIUM

We have had a number of association clients who have come to us after the board takes some action which is then challenged by an owner. Here are some of them in hopes that you can avoid making the same mistakes.

1. **Not following your governing documents.** Your governing documents have specifics about what you need to do and how your board should run. It may specify that you must keep maintenance reserves and how; or that you must have annual meetings in February each year; or that you must have a vote of the owners to approve any expenditure over \$5,000; or that each owner must present proof of ownership in order to vote at any meeting; or that each owner must supply a copy of their condominium Unit Owner's insurance policy. Not following your own documents opens the board up to challenge when owners don't like what is going on. We highly recommend that you review your governing documents annually to remind yourselves what you need to do and how.
2. **Adopting rules that cannot be enforced.** The most common example is a board passing a rental restriction by a vote of the board, or a majority vote of the owners. For "New Act" condominiums, state law requires that you get a 90% vote of the owners to restrict a property right, like the right to rent out property you own. Failing to get the required vote makes the rule unenforceable. Another type of unenforceable rule is one that conflicts with some other law. One association we work

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with proposed a rule that for one hour per day, only adults were allowed in the swimming pool. This rule was not enforceable because of the federal Fair Housing Act.

3. **Selectively enforcing rules.** We had a client that came to us to enforce their “no pets” rule because a renter had moved in with a big dog. During the conversation with the client it came out that there were at least 12 cats living in the building, and at least one other dog (but a small one). We had to advise them that they could not enforce the “no pet” rule just against the one owner, they had to enforce it against all of the owners. If they wanted a “no dogs over 25 pounds” rule, they would have to pass an amendment to their declarations to change it. Make sure that your declaration and rules reflect accurately what your association wants in the way of restrictions (of all kinds), and that you enforce it against all residents uniformly.
4. **Charging unreasonable fines or fees for services.** Our favorite example is an association that was charging \$300 for a resale certificate, which Washington state law says can have a charge no larger than \$150. Other examples that associations have tried include large monthly administrative fees for units with tenants, a \$500 fine for bringing a bicycle through the lobby of the building, a \$200 fine for a unit owner not taking the trash out of their unit at least once each day, and a \$1,000 fine for moving furniture in or out of the building without prior notice to the property manager. Make sure that your fees are reasonable in relation to the activity involved, that your fines are reasonable relative to the cost or inconvenience they intend to discourage, and that your governing documents allow you to assess the fees and fines.

CHAPTER 4 – MISTAKES YOU CAN AVOID

5. **Failing to get multiple bids for major work.** Some declarations require that boards obtain at least two competitive bids for any major repair. We believe that the exercise of ordinary and reasonable care requires that boards consider at least two vendors before entering into any contract that has a long duration (like a property management or cable TV contract) or has a high cost (like a new roof or building reconstruction.) We recently worked with an association that was ready to sign with the contractor assisting their engineer to define a project scope, but their declaration required two bids for restoration work if practical. We advised them to bid the project. When the work was put out for competitive bid the responsive low bidder was more than 30% below the first contractor's estimate, saving the association over \$600,000. Since you should have a defined scope of work for any project or service you are procuring, getting more than one price seems like an easy task to accomplish. We are not saying that you have to hire the low cost bidder, but that to make an informed decision, you need to have more than one bid.

6. **Entering into contracts without knowing what the contract says.** Common examples are contracts for cable television service, utility sub-metering contracts, and property management agreements. We have also seen agreements with professionals (like Architects) and contractors (whether landscapers or roofers) that do not say what work would be performed, and impose unreasonable terms on the association. Things like automatic renewal of contracts, unreasonably high interest rates on unpaid (or disputed) invoices, limitations on liability, and agreements to resolve any dispute under the laws of and in the state of Florida are clauses we have found in contracts signed by our clients. Read any contract you are presented. Change it to reflect terms that are fair and you can live with. Have an attorney help

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you understand what the contract says and means before you sign.

7. **Blindly trusting a vendor.** One of our clients had all of the windows replaced on one of their buildings. The contractor was the low bidder, by a lot. The contractor took a saw and cut through the siding to remove the old windows, and then set new windows into the holes, and caulked around the exterior frame. The windows leaked. Not really the windows; all around the windows, because there was not proper waterproofing around the windows. The price was so cheap that the association should have known that there was something wrong with the bid or the scope of work being performed. Other clients have completed expensive upgrades to their buildings on advice of a consultant, when the work provided little benefit to the association, but lots of work for the consultant. For any contract, make sure that you understand what is being provided, and that it matches your needs. If you are not certain, get a second opinion, or consult with someone who can help your evaluation.
8. **Failing to give owners proper notice of meetings.** Your governing documents will have specific instructions on how to give notice to owners about meetings. We have had clients that failed to give notice within the proper window of time, which makes every action taken at the meeting subject to challenge by the owners. Be sure you and your property manager know the notice requirements for each kind of meeting, and keep documents that show the meeting was properly held.
9. **Failing to keep minutes of board meetings and actions taken.** This is a frequent problem among developers who are running the board during the period of Declarant control. This

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is also a frequent problem among small boards that get along well in terms of making decisions. The problem is that they have no records to indicate what decisions the board has made, and no records that indicate that actions taken were legally authorized. Short cryptic notes are better than none. And minutes are essential for a board to understand what decisions were made before them, and what obligations the association is currently bound to.

10. Letting gossip be your primary means of communication.

When boards and associations don't have good meetings, and when they don't have good minutes or newsletters, the way that owners learn about things is through gossip. And if there is any negative consequence (like higher dues or a special assessment), the gossip that spreads will create its own wake of discontent and new gossip. We encourage associations to use letters and written communication to explain important matters to their members. We encourage boards to have meetings at which they share major issues with their members to get feedback on how different courses of action will be received. The board may have the power to make most decisions, but good communication will allow those decisions to be accepted more readily by all the members.

11. Spending more money than your association has.

We know one association that failed to disclose the \$225,000 final invoice for their construction project to their CPA, and that had also over spent on its construction project by about \$300,000. That was \$300,000 that it did not have. After the construction was completed, the board spent over seven months (paying 18% interest) getting approval from the unit owners for a special assessment and bank loan to pay the contractor for the work. A unit owner successfully sued the board for breach of its fiduciary duty and avoided the special assessment.

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12. **Waiting too long to start collections.** Even in the best of circumstances your association only has priority over banks and other lenders for the most recent six months of dues owing from the unit. We have had clients come to us with owners that have not paid for as long as three full years, and owed tens of thousands of dollars in past assessments and fines. It is difficult enough to collect when the amount is small, it becomes even more difficult when the amounts are large. We recommend that you promptly remind any unit that does not pay on time that they are late, and send any owner that becomes more than 60 days past due to your collections attorney.
13. **Trying to make a new rule to solve a current isolated problem.** We frequently have associations come to us to amend their declaration or make a new rule to stop some behavior that they find objectionable, usually from only one resident of the community. Whether it's limits on rentals, pet restrictions, barbeques, satellite dishes, political signs, parking restrictions, smoking prohibitions, or window coverings, you probably can't enforce the new rules against a resident if the behavior was not restricted when the problem started.
14. **Taking on obligations beyond what the association is responsible for.** We had an association come to us to find out how they could prevent the abusive boyfriend of a unit owner from contacting her. Another board wanted to know how they could prevent a dog (which was under the weight limit for the condominium) from biting people. The short answer is that if there is a threat to life or limb, you or the victim need to CALL THE POLICE. While boards have some responsibility to enforce the association's rules and regulations, they don't have the police power to enforce laws, and don't have the power or responsibility to protect every owner from the bad

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acts of other people. The board should not try to take on these near impossible responsibilities, or they may create liability for the association where none exists.

15. **Paying for expenses that are not the Association's responsibility.** Condominiums are divided into property that is owned by the unit owners, and that which is collectively owned. Many unit owners want their association to pay for things inside their units. We know one town-home association that defines the unit as a block of air from the sidewalk to the rear fence, from ten feet below grade to thirty feet in the air. Every part of the building inside that block of air is the unit owner responsibility, yet the board still paid for the damage to an owner's kitchen floor from a dishwasher leak. Picking up the expense for the interior of the unit will ultimately drive dues much higher.

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CHAPTER 5

KEEPING MINUTES FOR YOUR ASSOCIATION

Meeting minutes are the official record of what actions an association has taken and decisions it has made. In a practical sense, if it's not recorded in the minutes, it never happened. This is a primer on "why, who and how" of keeping meeting minutes. You should also consult your association's governing documents (Declaration; CC&Rs; By-laws) as those documents may give guidance on keeping minutes. Sources, such as Robert's Rules of Order Newly Revised, are also helpful.

Most associations have two kinds of meetings: All members or board only. This guide applies to both. Your association may also have committee meetings, such as budget or landscape committees, or informational meetings of your members where no action is taken by the association. Some record of these other meetings should be kept, but detailed minutes are not necessary.

Why Keep Minutes?

Keeping proper minutes of association meetings is important for many reasons:

- Legal Requirements. Washington State law requires all nonprofit corporations to keep meeting minutes.¹ The governing documents of your association typically require that you keep minutes, even if your association is not incorporated.
- Common Sense. Minutes keep track of issues of concern to the members of your association. They also help ensure that

¹ See RCW §24.03.135(5) and RCW §24.06.160.

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your members have a clear record of what the board and association have done.

- **Business Sense.** Having clear records of decisions and discussion topics may save you stress and headaches if your association becomes involved in disputes with owners or third parties (like vendors). Minutes confirm that actions of the association are carried out appropriately – and legally. Minutes help document that a board has acted with reasonable care to perform its duties, and without prejudice or discrimination.

Not keeping minutes, or keeping poor minutes, makes it difficult to prove that your association has fulfilled its duties. For example, if there is no record of a vote for a special assessment in the meeting minutes, members could claim that the assessment is not valid.

Who Prepares Minutes?

It is the Secretary's responsibility to make sure that meeting minutes are taken. (Confirm this with your own Bylaws and Declaration.) Minutes must be taken whether the Secretary attends a meeting or not. If the Secretary is unable to attend, appoint a substitute from those who are present and instruct them on how to take minutes. Delegating the Property Manager to take minutes is a common practice.

Content of the Minutes

Minutes should contain a record of what was DONE at a meeting, not discussion. Minutes should not reflect the opinion of the person drafting the minutes, nor should minutes reflect the opinions of individual board members, unless specifically requested by the member.

The minutes must reflect any action approved by the board. We also recommend that minutes reflect any matters that come before the board for consideration, even if the board chooses to take no action. Every contract entered into by the

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association should be included as an approved action in the minutes, as should budgets recommended by the board for submission to the membership and decisions to adopt rules or regulations. Requests from members or outside parties are typically documented, even if the board takes no action. This means the minutes would note an owner's complaint about the landscaping, or an owner's request to install a washer/dryer in their unit, whether the board acted on these items or not.

Minutes Should Include:

- Type of meeting (general, board, committee, etc.);
- Date, time and place;
- List of attendees, specifying board members, absentees, those appearing by proxy and guests (we suggest you note which unit each member owns);
- Time of call to order;
- Approval (after correction) of previous meeting minutes;
- Record of issues addressed including proposals, resolutions, motions, seconds, nominations, and a brief summary of discussions;
- Records of all voting results, including who will see that the decisions are implemented;
- Time of adjournment;
- Occasionally committee reports or other documents are used at meetings. If they include important information, the documents may be entered into the minutes;
- Monthly financials reviewed by the board (Balance Sheets and Income Statements) are often kept with minutes;
- Copies of contracts and correspondence are also often kept with meeting minutes which approve them.

What Should the Minutes Look Like?

Format the minutes to be legible and efficient to read. Formatting with bold, underline or all caps may be helpful to set

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out important information or distinct categories. Use a separate paragraph for each topic and number items in lists. Attempt to be consistent in how minutes are formatted.

HINT: The internet can provide models for formatting meeting minutes.

HINT: **Use a Meeting Agenda to Help Take Minutes.** A prepared agenda that lists known topics for the meeting makes conducting meetings and keeping minutes easier and more efficient. Participants get advance notice of topics and can better prepare, and the agenda creates a template for keeping notes on discussion or actions.

DOs and DON'Ts:

The Secretary should ask for clarification if anything being discussed becomes unclear. Whether you type or handwrite notes at the meeting, the *minutes* entered into the official record should be a typed summarization of the issues raised and actions taken. Minutes should be as informative, clear and concise as possible. *You do not need a full transcript of your meeting.* The exception being that motions, resolutions or amendments submitted or voted on should be printed verbatim. Abbreviations should be clear to unfamiliar readers, or should be written out fully the first time they appear in each set of minutes.

Remember that minutes are the institutional memory of the association. Managers and board members move on, but a good set of minutes helps the board know what happened in the past.

Minutes should be as objective as possible – leaving out the opinion of the note taker. If inflammatory language is used in the meeting, avoid potential libel, slander, and insult by editing hurtful language out. Remember that minutes should reflect what was done and not what was said.

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Closed Executive Meetings

Sometimes closed executive board meetings are necessary due to sensitive issues such as employees or litigation. Closed meetings allow boards to discuss issues freely. In these circumstances, keep abbreviated minutes that reflect decisions made without great detail about discussions. Include enough information to show the basis of the board's decisions were reasonable. Keep documentation that supports board decisions. Minutes from closed meetings are not distributed to the membership; and should only be provided when legally required or when directed by the board. Laws that apply to your association and your governing documents may limit when closed meetings may be held. Consult an attorney if you are unsure.

What Do You “Do” With Minutes?

After the Secretary prepares minutes of a meeting, the group that held the meeting must review the minutes for accuracy and approve them as written. This typically occurs at the next meeting of the same group (next annual meeting for all members, next board meeting for boards). Boards may review draft minutes in advance of the meeting at which they are approved. Minutes need not be read aloud if the participants have an opportunity to review them in advance. Any changes or corrections to the minutes should be made prior to the minutes being approved and adopted into the record.

The meeting should include a motion to approve the minutes in their final form (which is documented in the minutes for the meeting at which they are approved). Once the minutes are approved by the association or board, an official copy should be dated, marked “approved”, be signed by the Secretary, and placed in the association's records in a book of minutes (3 ring binder). It is this approved set of minutes that reflect what the board or association has actually done. Do not keep drafts, notes, or unapproved copies; only the approved minutes.

CHAPTER 6 – OFFICERS AND MEETINGS

CHAPTER 6

OFFICERS OF THE BOARD AND CONDUCTING MEETINGS

The information below is intended as a general guideline. You should also review your association's records, consult the previous officeholders of your position and consult the governing documents of your association including the Declaration and Bylaws. Useful information is also contained in a parliamentary guide such as Robert's Rules of Order Newly Revised.

Officer Positions and Their Functions:

President:

The President of a condominium board functions much the same way a CEO would function in a corporation. The primary responsibility for getting things done falls on the President. This usually includes calling and chairing meetings, signing contracts, making minor day-to-day decisions, co-signing large association checks, representing the association to outside parties such as the association's attorneys, and generally making sure that the business of the association is running smoothly and efficiently. Being President of a condominium association is different than being a CEO, because association presidents don't make decisions on their own. Boards make decisions; presidents see that they are carried out. Other day-to-day activities of the board may be delegated to a property manager, other board members, and possibly to committees made up of unit owners.

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Vice President:

The Vice-President's function is first and foremost to step into the President's shoes during the President's absence or when a situation such as a conflict of interest necessitates that the President remove him/herself from a decision. When the President is able to perform his/her duties, this might leave a Vice-President without much to do outside of board meetings. That is why associations may consider delegating some specific responsibilities to the Vice-President.

Secretary:

The role of Secretary is vital to the proper functioning of any association. Simply put, the Secretary is in charge of keeping and maintaining the recorded history of the Association. You may be able to delegate some of this to a property manager, but the Secretary is responsible to see that it is done correctly. This includes taking meeting minutes; compiling and updating the list of members and their addresses; providing access to association records to members and anyone else who is legally entitled to them; and performing any related functions. Additional tasks that Secretaries might do include: bringing the record (governing documents, minutes, etc.) to all formal meetings; distributing letters or calling members notifying them of upcoming meetings; keeping the association's official calendar and preparing agenda sheets to be used at meetings.

Treasurer/Financial Officer:

The Treasurer is responsible for keeping track of the expenses, income and assets of the association. This may include sending out bills for dues and late fees, depositing funds into the association bank account, entering data into the financial records, being custodian for those records, co-signing checks, creating and proposing budgets, handling tax matters for the association, and presenting reports at meetings of the current

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financial state of the association. This is a position in which it is advisable to have a responsible individual with experience in managing finances. A CPA is often hired to help the Treasurer perform the more complicated functions such as performing audits and filing tax returns, and a property manager may collect all assessments and pay all bills under the supervision of the treasurer.

Additional Officers:

Depending on the size of your association, your association's governing documents may allow for additional positions to help spread out responsibilities. If this is done, make sure that there is no confusion about which responsibilities lie with which individuals. Examples of possible positions might be an Assistant Secretary, a Communications Officer responsible for running a website and producing a newsletter, an Operations Officer responsible to see that the common areas are being properly maintained or a Safety Officer. Remaining board members may be designated as "Officer-At-Large" or "Member-At-Large" with no specific responsibilities other than to help out the rest of the board in their duties and to vote as a member of the board.

General Responsibilities:

Regardless of the title of a director's position, all directors should perform as responsible members of the board. They must act in good faith, in a reasonable manner following appropriate inquiry, and in the best interests of the association. They represent the association to its members and to other parties. *When an officer signs a document, the name should be accompanied by the title of office and the name of the association to indicate that the officer is acting in an official capacity and not as a private individual.*

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Committees:

Some decisions require more research and discussion than others. It may be prudent for the board to appoint a committee made of board and/or non-board members who will investigate a matter in more depth. If there is discussion about construction of a new roof in the common areas, or finding a new landscaper, a committee may be assigned to check the costs and benefits of proposals and the background of a vendor, and to report its finding to the board so that the board and the association may make better informed decisions more efficiently.

Property Manager:

Often community associations hire a property manager to deal with many of the matters that the board is responsible for. The duties of the property manager vary depending on the scope of the contract with the manager. The manager may handle a variety of issues such as scheduling repairs, ensuring that proper signs are in place, paying bills, distributing information to the owners, and keeping minutes. It is important to remember that when the board delegates responsibilities to a property manager, they are giving up control without giving up responsibility. The property manager is generally a contracted employee or agent of the association, not a member of the association. Boards must monitor the activities of the property manager to make sure necessary activities are being carried out appropriately.

Conducting an Annual or Special Meeting of all Owners

Now that the various roles have been described above, it may be easier to understand how a meeting should operate.

Location/Time:

In deciding the location of a meeting, consider a space large enough to hold the meeting if everyone attends. If your association does not have a suitable common room, you may

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need to borrow or rent a space. You can consider using a local library, school, church hall, etc., as a cost efficient way to have off-site meetings in an appropriately sized location.

Agenda:

We recommend the President conduct the meeting according to a prepared agenda. It should function like a check list that helps run things efficiently and aids the Secretary in taking complete minutes. Your governing documents may dictate an agenda and how it is ordered. Generally, the agenda for an annual meeting should look like this:

- 1) Roll Call (Is there a quorum?)
- 2) Proof of Notice of the meeting or waiver of notice (i.e. did everyone know the meeting was taking place?)
- 3) Approval of the Minutes of the preceding meeting
- 4) Reports of officers (like a Treasurer's report)
- 5) Reports of committees, if any.
- 6) Unfinished Business (things previously discussed but not resolved)
- 7) New Business (anything new brought by any member)

When elections of new board members or officers must be scheduled, this can be placed on the agenda anytime after the reports of the officers.

Hint: The list of unfinished business from one meeting is a good foundation for the agenda of the following meeting.

Hint: Board meetings also benefit from an agenda.

Roll Call: The roll call at the beginning of an association meeting (or other means to establish a quorum) determines if the decisions made at the meeting can be binding. If there is no quorum present, then the meeting can not go on as an official meeting. A quorum is the minimum number of votes present in person or by proxy at a meeting necessary for the meeting to legally take place. Depending on which laws apply to your

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association there are statutory minimum requirements about what constitutes a quorum. The Washington Condominium Act requires at least 25% of votes represented either in person or by proxy for general meetings, and at least 50% of the board present for board meetings. Governing documents may dictate higher percentages.

Notice: Usually after a quorum is determined the next step is to confirm that everyone who had a right to attend the meeting was properly notified. If a meeting was called without proper notice to all members, then some members may refuse to recognize the decisions that result from the meeting because they did not have an opportunity: 1) to be informed about an issue; 2) to attempt to persuade people to change their views; and 3) to vote on the issue.

Minutes: The Secretary has responsibility to see that minutes are taken for all meetings. Minutes are the official record of the events that occurred at the meeting.

Handouts: The use of handouts at meetings often helps people follow along and make input. Copies of the agenda, balance sheets, summaries of committee reports and other such handouts should be entered into the record along with the minutes from a meeting.

Guest Speakers: Another valuable way to address matters at meetings is by bringing guest speakers to discuss matters with the board and/or association. It may be a police officer to discuss crime and safety, the association's attorney to discuss a litigation matter, an architect to discuss plans for a renovation project or some other expert.

Expedite matters:

Meetings should not last all day. Whoever is presiding over the meeting should move the meeting along. It is easy to get lost in debate over trivial issues, so someone must make sure that decisions are made even if the decision is to "table" (postpone)

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the matter to another day. But, be careful that you don't stifle someone when they are trying to get their point across. Allow them to speak and state their position without engaging in debate. If you expect confrontation, we recommend you have every member wishing to speak sign up at the beginning of the meeting. Let them speak once, and set a time limit for each if necessary.

Formality vs. Informality:

Depending on the size of your association or the size of your board, you will have to decide how formal meetings will be. As a general rule, meetings over about a dozen people should be conducted in a formal manner using rules such as those found in *Robert's Rules of Order Newly Revised*. Otherwise, there is a danger that the meeting will fall apart, skip topics or wander off into other matters. These defeat the purpose of meeting as a group and inhibit decision making and the taking of minutes. For smaller meetings, such as board meetings, informality may work fine as long as the presiding officer is there to rein things in. Small meetings can be conducted like a conversation and decisions are often made by consensus without formal motions and votes. But make sure decisions and actions of the meeting are properly documented in minutes.

Decisions and Follow-Through:

As meetings progress decisions are made. Unless a motion is voted down, most votes are followed by an action of some sort. Once the association has decided on a course of action, someone needs to be designated to follow through. This may be anyone present, but if the property manager is not there and needs to know about a decision, *someone* needs to inform him/her. Additionally, any decisions that affect the members must be communicated in a way that is most likely to reach them and is as required by the governing documents. The minutes might reflect who is following through on each item.

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CHAPTER 7

AVOIDING PERSONAL LIABILITY AS AN ASSOCIATION BOARD MEMBER

Board members of condominium associations have a lot of power over their communities. This power comes with responsibility and also some potential risks that can result in personal liability. With a little knowledge and diligence, those risks can be minimized to protect an association member who volunteers or is elected to the board.

How is Personal Liability Judged?

Generally, community association directors are judged by the same standard by which directors and officers of commercial corporations are judged. The standard is called the Business Judgment Rule, and it was passed into law in Washington as follows:

“A director shall perform the duties of a director...in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances...”

See RCW 23A.08.343

This means a director isn't liable for honest mistakes and reasonable errors in judgment as long as he intended to act in the association's best interests and acts based on reasonable information. This “reasonable and ordinary” standard applies to elected directors of all condominium associations.

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“Absent a showing of fraud, dishonesty, or incompetence, it is not the court’s job to second-guess the actions of directors.”

Quote from appellate court case entitled Schwarzmann v. Ass’n of Apt. Owners, 33 Wn. App. 397, 403 (1982)

This differs from the level of care that is expected from directors of condominium associations that are *appointed by the Declarant*. When Declarants (i.e. developers) designate someone to be an association director, greater potential for conflicts of interest exist and so they are held to “a very high standard of care.” See RCW 64.34.308(1)

How is Personal Liability Avoided?

Confirm that your association is incorporated. Without incorporation, there is no corporation to shield you from liability. If the association is not incorporated, act immediately to remedy this. Otherwise, every member may be personally and fully liable for every obligation and liability of the Association.

Avoid conflicts of interest. The temptation to make decisions that benefit you is always present. It could be as simple as telling the painters to begin painting the side of the building where your unit is. A director should make an effort to be conscious of conflicts that may exist or which may *appear* to exist and try to make them non-issues. For example, don’t tell the painters where to start; let the painters decide themselves or let the full board decide. If a matter concerns you or your unit, have the board vote while you abstain.

Don’t self-deal. This is a kind of conflict of interest when a director is acting to achieve financial gain such as having the Association hire his business. If you truly feel that it is in the best interest of the association for *your* carpeting company to replace the carpets in the lobby, it is advisable to inform the board and then have them vote on the issue while you abstain.

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Don't commingle funds. If you are in charge of the money for your association, you may be tempted to “simplify” matters by keeping the money for the association in the same place as your own money. Don't. You should always keep your funds and the association's funds separate and follow the requirements set out in the Declaration (if any) for what accounts must be maintained and how. Property managers must not commingle your funds with those of any of their other clients.

Sign documents with your title. When an officer signs a document, the name should be accompanied by the title of office to indicate that the officer is acting in an official capacity and not as a private individual.

Act honestly. Do not act in ways that are fraudulent or dishonest. Whether or not a law is broken, you risk personal liability if you do unethical things such as keeping a unit member from attending a meeting, altering the official records of your association, or making up documents after the fact to support past decisions.

Communicate honestly. Tell the truth. Deceiving anyone—other board members or home owners—while acting as a director of your association will risk personal liability.

Note: Telling the truth does not mean disclosing more than you need to and it is sometimes okay to refuse to give a non-board member all of the information asked for. There are proper channels for owners to go through to access records of the association available to all owners. There is a difference between the information you have an obligation to proactively convey and the information you must legally provide to respond to specific requests. All of it, however, should be truthful.

Maintain good communications. Keeping the board and the unit owners informed about meetings and other association issues affecting them is essential to avoiding personal liability.

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This way, if matters concern them, they will know where and how they can ask questions. Written forms of communication can help provide a documented history of what has happened over time.

Don't hide bad news. Failing to reveal things to your board and the owners won't make problems go away. Did the renovations go over budget? The longer you hide information, the greater the likelihood you will be personally blamed for things that are otherwise not your fault.

Don't make rash decisions. Some situations require decisiveness, but making important decisions while emotionally charged or without all the information spells trouble. Weigh the costs and benefits of the consequences of your actions. Most decisions don't have to be made on the spot. Informed decisions are always better than reactive ones.

Don't act against the Board's decisions. No matter what you personally think, you should abide by the decisions that the Board makes as a group. Once the board has voted, anything that you do that is in conflict with those decisions will be directly attributable to you alone. If you disagree strongly with a decision, you can note in the record that you are only carrying out the wishes of the Board.

Continue to re-evaluate decisions as situations progress. After decisions are made, circumstances often change. You learn new information. People don't keep promises. The needs of the owners may shift over time. Don't be afraid to revisit decisions and to make changes that are in the best interest of the association. Don't do something only because "that is how we have always done it."

Be careful of libel/slander. Avoid inflammatory language in writing and even in passing remarks. Your association is also a neighborhood. Even when something is said in a closed executive meeting, the 'juiciest' things sometimes get repeated. Your words could be misunderstood or come back to haunt you. Also, you might consider paraphrasing inflammatory comments

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from meetings as the minutes are being prepared. Minutes should reflect board actions, not details of discussion.

Don't violate the law. You didn't need to read this chapter to know this one. If you intentionally break the law, the Business Judgment Rule will be violated too. Also, you should make your best efforts to prevent the Board from breaking the law if you have knowledge that its actions may do so.

A Little about Directors and Officers Liability Insurance:

Every condominium association should consider D & O Insurance to cover directors, officers and other volunteers for potential liability for "errors and omissions" in performing their duties. The greatest benefit of this insurance is to provide for defense from claims made against the board or individual members who acted on behalf of the board and to pay their attorneys' fees. While the insurance protects against negligence amounting to mismanagement, it will not provide protection for willful, wanton or malicious behavior. There is probably no coverage for knowing violations of the law either. Insurance is not a substitute for responsible behavior, but rather it is an extra layer of protection. This insurance is usually reasonably priced and we generally recommend our clients carry it. Often, association governing documents require it be purchased.

Duties to Act:

The simplest way to avoid personal liability is to fulfill your duties in a proper manner. Under Washington law, this basically means to diligently do your job, in good faith, and to rely on competent sources of information. These sources of information may include members of the board or committees knowledgeable on the matter, professional consultants and/or experts. Obviously, if you have reason not to trust a source of information, then you shouldn't rely on it. Obtaining second opinions is often a reasonable course of action.

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Your association's governing documents (declaration, bylaws, etc.) may go into greater detail about what you are required to do (e.g. "Any decision costing over \$5000 requires a full board vote"). Following the requirements set out in the governing documents is important if you wish to avoid being held personally liable. Some things may be obvious, others may not be.

Your first duty may be to learn what your duties are under your governing documents. Numerous courts have found that not knowing your responsibilities and other basic information about the corporation may cause personal liability to be inferred if that knowledge would have led you to prevent someone else on the board from acting in a way detrimental to the corporation.

For further research on this subject see the appellate court case *Senn v. Northwest Underwriters*, 74 Wn. App. 408 (1994).

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CHAPTER 8

RISK-BASED DECISION MAKING

Understanding possible outcomes from decisions is vital to making good decisions as an association director. Boards need to consider many different types of risk including: financial, “political” (popular among owners), legal (e.g. challenge by owners), reputation and physical damage. The world we live in is filled with uncertainties and gray areas. Legal entitlements such as court judgment awards don’t always happen the way they should. People have differing expectations and value different things. People evaluate things differently. What is considered success for one person is deemed failure by another. Sometimes, the cost of being “right” may be excessive for the benefit achieved. It is valuable to consider risk-based decision making.

Whether or not you act, things will continue to happen and decisions will be made. Simply doing nothing is a form of decision even if unintended. (It’s better to make a purposeful decision not to act than fail to act.) Consider what the consequences are—the passage of time results in consequences, even if you don’t act. Other parties such as banks, owners, contractors and the government will act independently of you, and you will have to deal with the results. In this world of complexity and uncertainty, you need to do the best you can to be informed and make decisions.

Variables Complicate Decisions

Decisions are rarely simple because uncertainty is everywhere. You should make decisions based on likely outcomes. Consider the “what ifs” and how to respond to each of them. Attempt to evaluate potential consequences of actions you

CHAPTER 8 – RISK BASED DECISIONS

may take, including unlikely outcomes. Sometimes none of your options in addressing a problem will be attractive ones, but you must decide anyway. Make decisions based on tolerable risks. Re-evaluate your decisions as you learn more. If circumstances change, make new decisions as appropriate.

Seeking an Optimal Balance

The goals that association directors pursue often conflict with each other. Some examples of conflicting goals include:

- Time vs. Cost or Quality
- Quality vs. Quantity or Cost
- Allowing Free Will vs. Maintaining an Orderly Society
- Accommodating an Individual vs. Imposing on the Community

Make sure that you understand what your community values most when considering your options. Strive for an optimum mix of likely outcomes since it is rare that your options allow you to advance all of your interests at the same time.

Do you have a Mission Statement?

Writing down what your association values makes decisions easier. As a corporation, it should have corporate values that its members share. A mission statement can either be very simple or very specific with policies and objectives. In drafting a mission statement, try to understand what your community values. If your association values appearance and security, you will make different decisions than if it values thrift and efficiency.

Every association struggles with controlling expenses. But every association also wants to provide benefits to the quality of life of its members. If you know what your members value, and are willing to pay for them, your decisions are more consistently made.

CONDOMINIUM COMMON SENSE

Possible Mission Statements:

“To provide a safe secure environment for our residents.”

“To efficiently maintain a safe and comfortable community.”

“To be a premier condominium in appearance and amenities provided to our residents.”

Consider the Risk of NOT Making a Decision

Some decisions are low risk in both consequence and ability to “undo”. Some decisions are high risk only with regard to some aspect of the decision. Failing to make decisions and/or deciding to do nothing both also have risk.

Many decisions don't have a “best” option. But usually some option is better than doing nothing. Get information about the situation. Consult with others as appropriate. Estimate likely outcomes and the financial and non-monetary cost and benefits, and make the best decision you can. Remember to document your decisions and reasoning.

While many decisions must be made by a specific time (like renewal of a management contract), or should be made quickly (like responding to an owner complaint), some can be examined endlessly to have everyone feel comfortable with the decisions (such as how to remodel the lobby). If it's a major expenditure, not making a rushed decision is appropriate.

Evaluating Risks

When evaluating risks, it is important to do a cost-benefit analysis in which one looks at potential costs and negatives and weighs them against the potential benefits. It is also necessary to take into consideration the differences between the past, present, and future circumstances. You should have an understanding of the means and methods of risk management such as insurance and project oversight. Remember that as directors of an incorporated association, your personal liability will be limited by

CHAPTER 8 – RISK BASED DECISIONS

the Business Judgment Rule which protects directors when they have acted in good faith with reasonable and ordinary care.

Situations Benefiting From Risk-Based Decision Making:

- Deciding to foreclose on a unit for nonpayment of assessments;
- Deciding how much and what kind of insurance to buy for the association and how much of a deductible to have;
- Shifting responsibilities or risks to unit owners from the Association or vice versa;
- Deciding whether to investigate buildings for construction defects, and whether to litigate if any are found;
- Setting reserves for future repairs as part of your budget;
- Making major repairs—deciding how and when. What products to use, and what experts and contractors to trust.

Example #1

Collection of overdue assessments. How long should you wait before acting? Do you cut off utilities? (This may only be available to you if you are an Old Act condominium.) Consider the advantages and disadvantages of a personal lawsuit instead of foreclosure. Is judicial or non-judicial foreclosure preferable? Will the association lose its right to payment by causing a party with a higher priority interest (e.g. a bank) to react? The association may be liable for attorney fees and costs of both the HOA and even the unit owner if the collection is unsuccessful.

Example #2

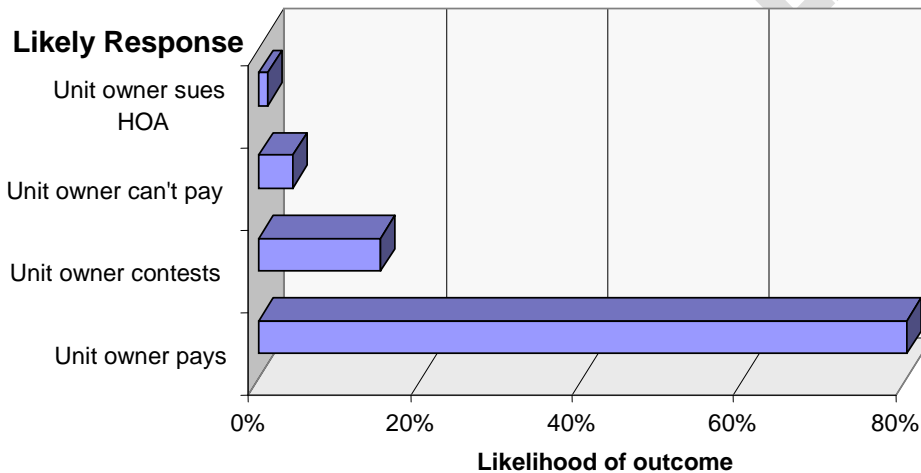
A business is operating from unit in violation of the rules. The business receives no customers or deliveries and does not bother anyone. The owner pays dues and follows other rules of the community. Should the association sanction the owner for the violation? Enforcing the rule preserves the rule for use against a

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future business that is more burdensome, but may lead to rental of the unit to more troublesome tenants (such as drug dealers).
What other issues might be involved?

In Example #1, the issue is collecting overdue assessments. The graphic below illustrates how a board might weigh the odds of various outcomes of legal actions against the unit owner.

Association Commences Legal Action for Non-Payment of Dues



Continuing with the same example, consider the outcomes of alternatives to a collection action. The association may not be able to meet its financial obligations since it is not collecting from all owners. The association may lose the ability to collect money owed to it by waiving its rights or by the unit owner going bankrupt. Other owners may mimic the first one and stop paying. Other owners may feel cheated. Alternatively, if the delinquent unit owner is in a financially difficult situation, withholding legal action for a limited period of time may be considered civil and humane by the other owners. If the board chooses not to enforce a collection rule, be sure to document why, since failing to do so might bring its own risks to the community and board.

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Example #3

Leaky Roof in Need of Repair and/or Replacement. The risks include damage to the roof, the interior unit and the non-financial costs to a unit owner of water in their unit (e.g. inconvenience of being forced to temporarily leave unit and damage to personal belongings). Should the roof be repaired or replaced? A low cost immediate solution may stop the leak but may only work for the short term. A high cost comprehensive solution may be a long term solution but may be unreasonable because the association lacks sufficient money for that solution. Insurance may cover leak damage, but the annual insurance premiums may be driven up by reported claims. It is possible to quantify the actual and estimated costs, to calculate the risk of future leaks, and prepare a risk analysis report to help the board make its decision. This is more work than most boards consider appropriate.

Ways to Reduce Risk

There are numerous ways to reduce risk that your association is exposed to. Insurance is a means by which the financial risk of the association will be shifted away from the association onto the insurance company. You can reduce risk by investigating and collecting information; the board will be better equipped to make the best decision and avoid unnecessary costs. This includes consulting with professionals and communicating with unit owners. Risk can further be reduced by carefully amending the association's governing documents to clarify and limit liability. Also, risk can be reduced by carefully examining and negotiating provisions in contracts that the HOA enters into. Most contracts are not just an exchange of money for services, they also allocate risk between the parties that the services will be adequate and suitable for the buyer's needs. You reduce risk by clarifying in the contract whom is responsible for costs when the

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circumstances encountered are not as expected, and by defining performance standards and warranties.

Information Often Reduces Risk, BUT, Costs Time & Money

As mentioned above, information is a valuable tool for reducing risk. Professionals may have specific expertise that will greatly change your perspective on a problem (e.g. an engineer will assess whether a leaky roof poses a risk of structural damage or not.) Communicate with the owners. They may have additional information. By researching, you may find more options that were not immediately apparent to you. A word of warning: more information may not help you decide, even though it will cost both time and money. How much information you need to gather is yet another decision that it is up to you to make.

Make Educated Guesses

When information is limited, sometimes the best that you will be able to do is guess. That may be all your hired experts can do. Many outcomes are uncertain. (Will a repair hold? Will an owner pay?) Some may not be precisely measurable. (Will owners be upset? Will it look pretty?) Many can only be estimated with ranges such as "\$5,000 to \$8,000" or "20% to 30%". Outcomes can be ranked by magnitude presenting a descending or ascending list based on factors such as which is most risk free, most expensive, most expedient and so on. This ranking may help boards in their decision making process.

Revisiting Decisions

After a decision is made, evaluate the results. Do the results meet expectations? Has more information become available? Have other circumstances changed? Is cost to "undo" a decision high? Be willing to acknowledge if things have not gone as planned and to revise decisions as appropriate. Stubbornness can be costly to your HOA if it carries you towards an undesirable result.

CHAPTER 8 – RISK BASED DECISIONS

Most Recommended Tools

- Written and adopted shared values.
- Written policies and procedures:
 - Collections rules and procedures
 - Pet policies
 - Annual gardening and maintenance plans
 - Door man or security schedules.
- Document the process followed on any complex or expensive decision.
- Keep notes and records of results following implementation of decisions.

Things to Try:

- List possible outcomes and probability of each.
- Place a cost or value on each alternative (\$ or preference).
- Do a Cost vs. Benefit analysis.
- Write down the options you consider and reject.
- Share the decision with others and see how they respond (other members, property manager, attorney, etc.).
- Present information in an alternate form. People learn and process information differently. Sometimes graphs and pictures are better than a narrative to help people understand the options.
- Write down what you value. (A Mission Statement?)

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CHAPTER 9

EVALUATING ASSOCIATION CONTRACTS

Associations must enter into contracts to obtain a variety of essential services. Property managers, landscapers, contractors, cable TV providers, etc. will usually require a signed contract before they begin work or allow access to their service. Even without a written contract, you may create an oral contract by the representations and actions of the parties. You just won't know what most of the terms of that contract are until you have a dispute. Contracts that fail to address specific terms will have them added (or prohibited) by law. We suggest that you obtain assistance from an attorney for any contract that is long in duration or high in value.

Contracts create legal rights for payment and performance in a specified manner, and they allocate risk. You should resist the temptation to sign contracts without thoroughly reviewing them, and you should remove or amend parts of the contract that unreasonably favor the other party. Make sure that the contract accurately reflects the business deal that you want. You should not hesitate to propose additional language for the contract that favors the association's interests and clarifies the intent of both parties.

What should you look for when reviewing a contract? The central purpose of a contract is to establish a binding agreement between parties and set out the obligations of each party under that agreement. It should also allocate risk and anticipate a variety of problems that could occur. Your first task is to make sure the agreement (or the "business deal") is accurately described in sufficient detail in the contract. How much of something will be provided to you? When will it be delivered? What if it is late? How will you measure the quality? What will it cost?

CHAPTER 9 – EVALUATING CONTRACTS

One of the most important terms in a contract is the price, and the contract should be clear about how it is calculated. Contracts are priced in three basic ways: Fixed Lump Sum, Fixed Unit Price, and Cost Plus. Some contracts will be a combination of these three. If someone hands you a contract with an “estimated” total price, you may actually be entering into a unit price or cost plus contract without knowing.

In a “Fixed Lump Sum” contract, the full amount and type of work is known and the contractor is paid a specified amount of money for that work. A contract to remove and install a new fence may be a good example. A contract for property management services or cable TV could be other examples. Here the risk that the work will cost more or less to perform than anticipated is borne by the contractor.

In a “Fixed Unit Price” (sometimes known as a “Time and Materials”) contract, the performing party is entitled to a specified amount of money for each unit of time worked or service provided. All costs, overhead, and profit are typically included in the unit price, and materials are typically charged at cost plus a percentage markup. Contracts for professionals like attorneys and engineers are often of this type. Contracts for service employees like electricians and plumbers are often of this type. Utility contracts for power and water are also of this type. The risk of additional time being required is fully borne by the association.

In a “Cost Plus” contract, the performing party is entitled to the actual cost it incurs to perform, including all costs associated with labor, taxes, materials, insurance, and subcontractors, with a percentage markup to cover overhead and profit. We typically see these only on construction projects where it is difficult to define the work in advance. Fire restoration contracts are sometimes of this type.

Some contracts may be hybrids of two of the above. For example, a property manager may have a fixed charge per month to manage an association, but pass all costs for postage, copies,

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etc. through to their clients at cost. Either way, we want you to understand exactly what you are buying and how you will pay.

Regardless of the type of pricing, the contract should set forth matters that will affect the final price. Does the association retain the risk for unforeseen problems? Will taxes be added? If the contract involves hourly rates, it should specify exact hourly rates and provide for how time will be calculated. Is travel time billed? How is time rounded up? How and when the association will pay should be stated. If the contract has late payment fees or interest on overdue amounts, ensure that they are reasonable.

In terms of performance requirements, you need to know exactly what each party must do. What, if anything, will the other party need from you to perform the work (documents, on-site storage, supplies, etc.)? You may wish to set out specific deadlines for performance. The length of time that the contract will be in effect should also be considered, as well as whether the contract will automatically renew. Do you have standards by which the performance of the contractor's work can be measured? Can you define in the contract the quality of the work or service?

For construction and maintenance contracts, do you require the contractor to use new materials of good quality and describe the materials as specifically as possible? Are there warranty provisions spelled out? Do those provisions protect you as the buyer, or do they protect the contractor by limiting his liability? Are the incidental activities (like trash removal, or making photo copies) clearly defined?

It sometimes becomes necessary to change the scope of a contract during performance. A contract should define who is authorized to make changes for each party. Possibilities include board members, the property manager, or consultants you have hired. You should reserve the right to make changes within the scope of the performance requirements. You should require written change orders prior to any work different than the contract.

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Communication between the parties should be addressed. Contracts often established how often the parties will meet and provide information or services. Depending on the service or work being contracted for, specific language should address the performance by all parties, time, quality, and anything that is important to your association.

You should ensure that the contract protects the association if something goes wrong during performance. Requiring contractors to carry insurance that covers the association is one way to do this. “Hold Harmless” agreements are another. Stating that the association will not be liable for claims arising out of the work and requiring the performing party to pay for an attorney to defend the association against any such claims (for personal injuries or property damage sustained during performance, for example) is another way to help accomplish this goal. The association should specifically be protected from claims by employees of contractors or businesses that you hire.

Contracts should contain provisions for termination either for cause, or for the convenience of the association. If you just become unhappy with some services (like cable TV or property management) you would prefer to have the right to just switch. The service provider would prefer to keep you paying them no matter how bad the service they provide may become.

Dispute resolution procedures should be included in contracts. Do you wish to submit to mandatory mediation and/or arbitration? Will the arbitration be binding? The default alternative is litigation. Litigation may be more costly and time-consuming than arbitration, but may permit more access to discovery and is arguably a more favorable forum for associations to present their claims. Contracts should also state whether each party pays its own legal expenses (the default rule) or if the losing party must pay the prevailing party’s legal fees.

Contracts should define the remedies available to the parties if the contract is breached. You should reserve the right to

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withhold payment if your contractor is not performing. If damages from non-performance are difficult to estimate and prove, consider specifying a certain sum, but remember that Washington law does not favor penalties, only actual damages. In other words, the purpose of the sum should be to compensate a party for a harm that it will suffer, not to punish the nonperforming party. If delay damages are included in the contract, then a bonus for early completion would be reasonable as well. Finally, you should make sure that the contract adequately describes the causes that allow a party to terminate the contract, what notice is required to exercise this right, and how much time the other party may have to correct the problem.

Some contracts are appropriately short and easy to read. Some contracts use forms prepared by specific industries that may be many pages long. The American Institute of Architects (AIA) has prepared a number of "fill in the blank" contracts that relate to the design and construction of buildings, and these may be appropriate (with some editing) for use on major repairs and building remodels. These are often considered more neutral than contracts penned by the contractor.

Proper review and editing of proposed contracts can prevent major headaches down the line. We are frequently amazed at the unfair terms a service provider will insert into their contract, expecting an association to either ignore it, or accept it without question. Attempting to envision precisely how the contract will be performed under a variety of circumstances and the different snags that might be encountered along the way is a good practice whenever a contract is presented to you. Keep in mind that contracts usually favor the party that drafts them. Remember that you almost always have the power to modify the terms, or find another vendor. We recommend that you seek the advice of an attorney for any contract that is complex, involves a large amount of money, or extends a long period of time.

CHAPTER 10 – DELINQUENT ASSESSMENTS

CHAPTER 10

NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

MAKING THE MOST OF DELINQUENT ASSESSMENTS

In a perfect world, owners pay assessments in full and on time. Unfortunately, delinquent assessments burden many condominiums and spawn contempt from those owners who pay on time. Association governing documents appear to provide absolute power to collect delinquent assessments and the attorney fees and costs associated with such collection. But the real world of collecting assessments is fraught with uncertainty, and involves the unpleasant prospect of taking hurtful action against a neighbor who may have sympathetic reasons not to pay. Sometimes there's just no money or the interests of lenders wipe out the rights of the association. In such situations, the best result a collection action can bring is a new owner who pays on time.

Our best advice regarding collections is to have clear collection policies and enforce them promptly and consistently. These policies can include penalties (such as late fees and fines), timelines for specific actions, the types of actions that may be taken, appeal procedures, and the assignment of decision-making authority regarding individual collection actions to board members or property managers. These policies must be consistent with the governing documents of the association and comply with state and federal laws. Most "problem" collection matters we handle result from long delays in starting collection

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actions, mistakes in calculating overdue assessments and fees, or inconsistent collection activities against different unit owners.

Boards must ensure that collections they pursue (including fines, late fees, and attorney fees) are accurate and reasonable. Boards and property managers must also be aware of the risks associated with pursuing collections, which can include the risk of no recovery from an owner, the risk that a lender may limit the association's recovery, or the risk that a delinquent owner will sue the association and claim discrimination, invalid assessments, or other reasons to refuse payment. Delinquencies aren't just about inability to pay, but sometimes involve refusal to pay as a matter of principle. Collection actions can also lead to discord and angry confrontations within a community.

Initiating a collection action is an unpleasant decision for a board. Taking aggressive action is difficult when owners experience legitimate financial difficulties and make emotional appeals for leniency. However, boards must ensure the financial health of their associations, and unpaid assessments undermine that health. Delinquencies can also affect the ability of owners to sell units and the ability of owners and buyers to mortgage them.

Many associations and property managers attempt collections on their own, either to save money (for the association or the delinquent owner) or because they consider it less aggressive and offensive. But the involvement of an attorney sends the message that the association is serious, ensures that the process complies with governing documents and the law, and achieves better results. Attorneys also help insulate board members from the guilt of pursuing their neighbor or the backlash of an angry owner. Usually attorney expenses to pursue collection actions are recovered from the delinquent owners as provided by the governing documents.

We emphasize that overdue assessments must be addressed quickly and consistently. This leaves the association the broadest range of legal options and the greatest chance to

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recover all assessments, fees, fines, and collection costs. Prompt action helps associations recover all overdue assessments when lenders are also pursuing collections, since Washington state law provides many associations a super priority lien for six months of assessments. We recommend boards pursue collection through an attorney at sixty days delinquent.

Associations have several options when collecting delinquent assessments. Payment is sometimes obtained from a letter describing the legal consequences of continued nonpayment. (Sometimes owners really have forgotten, or automatic payment programs have failed.) If this is not successful, more aggressive steps can be taken in quick succession. These steps could include: setting up alternative payment plans, placing a lien on the unit (quick results if the unit is sold or refinanced), cutting off utilities (permitted for some older condominiums), accelerating future assessments or requiring a security deposit (often proposed to allow concessions and encourage payment), diverting rent to the association (requires a cooperative tenant and appropriate governing documents), filing a personal lawsuit against the owner (and seeking garnishment of bank accounts or wages), or undertaking a foreclosure action against the home (most expensive option but a decisive means of resolving a collection matter). Specific actions each association can take are determined by its governing documents.

Collection actions usually lead to the association collecting what it is owed, including attorney fees and fines, but there is risk associated with collection actions. Common examples are owners that abandon their homes (no equity) or who file for bankruptcy (limiting the recovery). Other situations may result in no or partial recovery, through no fault of the association or its attorney. Boards and property managers should consider these risks when developing collection policies, evaluating delinquency matters, and during the collection process.

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Ensure you are pursuing reasonable amounts. We have seen associations attempt to collect several years of late fees from owners who made regular assessment payments because a bookkeeper assessed a \$10 late fee which wasn't paid. Because the \$10 was not paid, they assessed new monthly late fees (also not paid) and then penalties and collection fees. The result was a collection matter for several hundred dollars against an owner who consistently paid his monthly assessment but disputed the original \$10 fee. Boards that pursue these kinds of collection matters have lost sight of what collections are reasonable to pursue due to a false belief that they have the ultimate power under their governing documents to collect these penalties and any resultant attorney fees. They are sometimes wrong.

Collection actions can also be complicated by claims of selective enforcement or discrimination. We have seen an owner who had not paid his assessments for many months sue an association claiming sexual harassment by a board member when a collection action was initiated. The fact that the claims had nothing to do with the unpaid monthly assessments did nothing to reduce the stress and expense incurred by the association in defending this unexpected lawsuit. (And in an even more offensive result, the association's insurer paid the delinquent assessment for the owner to settle the lawsuit!) Associations can help protect themselves from such claims by consistently following an established collection policy that is given to all owners.

A collection policy should detail specific events that trigger each step in the collection process, should state the time period for each step, should state what late fees and interest accrue, and should contain an appeal process to allow owners to contest delinquent amounts. A collections attorney can help the association draft a collection policy and help the association apply the policy consistently to all owners. The board can make reasonable exceptions to the policies if owners demonstrate legitimate hardship and present a plan to become current.

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Board members, property managers, and their attorneys must share an understanding regarding communication about collection issues and who has authority to make decisions. Boards are always the ultimate decision-maker when dealing with a delinquent owner, but they can assign decision-making authority to property managers, attorneys, or individual board members by policy or resolution.

A single person (usually the attorney after legal action has begun) must be designated to communicate exclusively with the delinquent owner about what amount is owed and options for payment. This person must have the ability to get quick authority from the board to accept alternatives to resolve matters. (It is often the prudent business decision to make concessions to allow a delinquent owner to become current.)

We encourage all condominium associations to adopt clear policies related to delinquent assessments and to enforce them promptly and consistently for all owners. Collection actions are sometimes necessary, and payment in full is the most likely result. However, decision-makers should carefully consider the risks and benefits of different types of collection actions before pursuing any one. This will promote better collection outcomes and preserve productive working relationships between boards, association members, and their property managers.

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CHAPTER 11

NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

CHOOSING AMONG COLLECTION OPTIONS

Mr. Smith has not paid his last three assessments. Your letters reminding him to submit payment have been ignored. The deadline in your attorney's demand letter has passed. Your attorney outlines several different actions that the association can take to pursue collection of the debt. Now you must choose how to proceed. What considerations should you weigh when making this decision?

Property managers and associations must evaluate which collection option is most appropriate for each situation. We provide an overview of the most common choices and point out benefits and risks associated with each. Some of these choices are not available to every association, and other remedies not discussed may be available. The advice of an experienced collection attorney about specific circumstances is recommended.

Most associations' governing documents provide for the recovery of attorney fees and costs from a delinquent owner, and the most common result is that these fees and costs are recovered at the end of the process. However, the association may not be able to recover the full amount owed if the owner lacks sufficient equity and the association is not first in line for payment in a legal sense. The association must be aware that collection expenses might not be recovered as it pursues the collection of past due assessments.

The most common collection tactics:

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Placing a lien on the property is always an option available to an association. A Notice of Lien is drafted and recorded with the county auditor. This provides notice to potential buyers and lenders that the association is entitled to a portion of the property's value. Liens should be filed promptly to establish the priority of the association's interest. The owner must pay off the lien to sell or refinance the property. Liens are simple and inexpensive, but they may not result in payment for a long period of time.

Accelerating future assessments or requiring a security deposit can be done if provided for in an association's governing documents. In the case of acceleration, notice is sent to the owner stating that future assessments for a defined period (often a year) are due immediately. In the case of a security deposit, notice is sent to the owner stating that a specified amount (often three assessments) must be deposited into an account that the association may draw upon if the owner becomes delinquent again after paying off the present debt. These tools are simple and inexpensive, but have limited effectiveness. Threatening to use them will sometimes convince owners to pay overdue assessments to avoid an even larger payment, and they can be waived to encourage owners to become current. However, the owner may ignore such notices.

Cutting off utilities is an option available to some older condominium associations. The owner must be given at least ten days notice before utility termination. This is a relatively simple and inexpensive method of dealing with overdue assessments and can be quite effective in prompting payment, but it can create community discord and often requires a contractor to disconnect the utility. Given the hardship involved (especially in winter), this method also involves the risk of being challenged on the grounds of discrimination, selective enforcement, or unreasonableness.

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A Personal lawsuit against an owner and attempting to garnish wages or bank accounts is an option available to most associations. Documents are filed with the court and served on the delinquent owner. If the owner fails to respond, the association can get a default judgment and proceed with garnishment if it can find the owner's bank or employer. If the owner responds, this method takes several months and can be fairly expensive. A personal lawsuit is often an effective way to collect the entire amount owed in one lump sum, but it sometimes provides unsatisfactory results.

First, paying off a debt through garnishment of wages can be a slow process because at least seventy-five percent of an owner's disposable earnings are exempt from garnishment under Washington law. The association can therefore only garnish a small portion of an owner's earnings each pay period.

Second, a wage garnishment will end if the owner changes jobs, forcing the association to find the owner's new employer and get a new order.

Third, garnishment of funds in a bank account will yield nothing if the account is closed or contains no money, and most banks will not disclose their clients' balances in advance of the garnishment demand. An attempt to garnish funds amounts to a gamble that the account will be open and there will be enough money to justify the effort.

Non-judicial foreclosure action against the property is an option that is available if provided for in the association's declaration. It is necessary to draft numerous documents to give proper notice to all interested parties and then to conduct a sale of the property. These actions take several months to complete, but they are a straightforward and relatively inexpensive way to either obtain payment from the owner or get a new owner into the property. The main drawback is that under Washington law associations

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lose their priority interest for six months of assessments if they pursue non-judicial foreclosure (which is often the only money that they can count on collecting with a fair degree of certainty).

Judicial foreclosure lawsuit against the property seeking to have it sold by the county sheriff is an option available to most associations. Documents must be filed with the court and served on all interested parties. This method can take many months and be quite expensive, but it can also be very effective in either obtaining payment of the debt (either by the owner, lender, or out of the proceeds of a sale of the property) or in installing a new owner. Foreclosure actions do involve risk. Lenders sometimes intervene or begin their own foreclosure actions, forcing the association to accept only its priority amount of six months of assessments. This can leave the association with much less than what is owed, particularly if the association waited more than three months to pursue collection. An association may even be unable to collect the priority amount if the lender sells the property and the association's governing documents state that the new owner is not liable for any prior assessments. The bottom line is that it is possible that some or the entire past due assessments could remain unpaid following a judicial foreclosure, and the association may have to pay substantial attorney fees and costs. However, judicial foreclosure does carry with it the greatest certainty that either the debt will be paid off or a new owner will begin paying the assessments.

Diverting rent payments means obtaining payment of past due assessments by collecting rent from a tenant of the unit. It may only be used if provided for in an association's governing documents. This is accomplished by mailing a notice to the tenant describing the amount owed and the association's authority to intercept rent payments in such circumstances. This is a simple

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and inexpensive way to deal with delinquency, but it requires tenant cooperation.

Decision-makers should reflect on how aggressive they wish to be. The collection philosophy will determine how much money should be budgeted for collection activities and how much risk should be taken. A lenient collection policy avoids the cost and risk of collection actions, but such a policy encourages more delinquencies and makes drastic actions such as foreclosure more likely. A strict collection policy involves more up front cost, but such a policy helps to ensure that assessments will be paid on time, allowing the association to fund essential services and keep monthly assessments at the lowest possible level.

Collection of overdue assessments is unpredictable. Sometimes payment will be obtained with very little effort. Sometimes the only positive result after months of expense and effort will be a reliable new owner. It is not possible for decision-makers to completely eliminate bad outcomes in this area, but they can minimize them if they understand the nature of the collection tools available to them.

CHAPTER 12 – BUDGETS

CHAPTER 12

BUDGETS AND PLANNING FOR THE FUTURE

Every association needs a budget to prepare for future expenses. This is both a practical and a legal necessity. A properly prepared budget will help your association attain its goals and will enable you to operate within the association's means (which will hopefully please the owners, at least in the long run).

The budget should separate funds into at least two categories: the operating account and the reserve account. Some condominiums require a separate insurance reserve account as well. The assessments levied on the units should cover all accounts required to be kept. Ideally, the monthly assessments to the owners should cover all expenses anticipated in the operating account budget and an appropriate contribution for the reserve account.

Operating Budget. The operating account should contain all items for revenue and expenses that are anticipated during a given year. This includes all services, purchases, taxes, monthly assessments and most other things that you may think of. You should also consider adding a cushion into the budget for unanticipated operating expenses that might come up during a year, such as the insurance deductible for the uninsured portion of a damaging event. If you have a cushion built into your budget you will not have to specially assess or pull money from another account to make up the difference in your budget.

Reserve Budget. The reserve account is intended for anticipated long term maintenance of the buildings and common elements. Construction does not last forever no matter how good the workmanship. After many years, the roof will need to be

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repaired, the driveway will need to be resurfaced, and dozens of other common elements will reach the age when they need to be replaced. The reserve account should be contributed to regularly over time so that the money is there when it is needed. We recommend that associations conduct reserve studies every two or three years to make sure that they are contributing enough to meet their future needs.

Special Assessments Should be Rarities.

Most special assessments result from a failure to budget and collect monthly assessments properly for the needs of the association. Sometime things are impossible to plan for, such as earthquake damage. Buying insurance and maintaining reasonable budgets for miscellaneous repairs or other costs will help avoid special assessments. Often, special assessments impose a significant burden on the owners because they come with little warning, a high degree of urgency, and are for large sums of money.

Things to Consider While Creating Your Budget.

Know what is important to the owners. The budget should not only be sound financially—it should reflect the values and needs of the association. Does it adequately provide for the services, appearance, and security that the owners are willing to pay for?

Budgets don't help if they don't match reality. Your budget should reflect your realistic revenue and expense expectations. If you normally do not get 100% of dues paid, do not plan to spend that much. If you have reason to believe that interest rates and insurance premiums will go up, adjust your budget accordingly. Conducting research and analyzing the financial statements from previous years will often reveal trends that should be considered when formulating the budget.

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The Budget has to pass. The best budget will not mean much if it fails to be approved by the board and ratified by the owners. Allow enough time for this process to take place.

Keep people informed. Not everyone will be pleased with the size of assessments or how much is being spent on certain items in the budget. Often their opposition to an assessment is based mostly on the surprise that accompanies it. If they understand the reasons why it is necessary, they are more likely to approve the budget and pay. Give forewarning to the owners at meetings, in newsletters and however else you think the message can be conveyed to them. If the cost of energy is going up, make sure the owners remember that when they see an increase in monies allocated to gas and electricity.

Keep the masses contented. Under the Washington Condominium Act, a board-approved budget will be automatically ratified unless a majority of the owners vote to reject it. If the budget fails to be ratified, the previous year's budget will serve temporarily until a new one can be approved. As you create the budget, keep in mind that your neighbors will have to agree with you that the money is going to the right places. Try to anticipate their reactions and avoid having to rewrite the budget.

Make Projections for Future Years. The association lasts indefinitely. It has a future and there should be some idea where the association is heading. That is why you should have a budget that predicts major repair expenses into the years that follow. Through use of a reserve study, look at least three to five years ahead for repairs. Most reserve studies will look twenty or more years ahead. We recommend that associations have a professional prepare a Reserve Study, evaluating the common elements of the condominium in terms of their current condition, when they will require replacement, and what they will cost to repair or replace.

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Stay Away from Bad Budget Practices.

Robbing Peter to Pay Paul. Once a budget is set, stick to it as much as possible. If a line item in your budget is not enough to pay the bills coming in, there should be a place in your budget for miscellaneous contingency expenses, working capital or some other non-specific use that is intended to cover the unexpected. Taking from the landscaping budget to pay the water bill will only defer the problem until the time when your landscaping bill comes. If you find that there is no money in the budget left for expenses without “robbing peter”, the time may have come to levy a special assessment.

Don't hide from reality. When you attempt to defer liabilities or leave costs out of the budget, they will come back to haunt you. Fancy accounting tricks and shell games may help make a budget look pretty, but when your association is in the red, the board and the owners need to see that. Otherwise, at some point the liabilities that are hidden may ripen into lawsuits, a bankruptcy for the association and/or foreclosure on units that are unable to pay necessary special assessments.

Avoid using old budgets (or the developer's estimated budget). Using last year's budget numbers may sound like an easy way to avoid the tedious work of preparing this year's budget. If it was done right, it should all be laid out for you, right? Remember that last year's budget was an estimate that may have been way off the mark. You should be examining the *actual* numbers for revenues and expenditures for previous years, not budgets. They give you a solid basis for predicting what you should expect next year. Developer's budgets are often very different from the actual experience of an association.

Don't cut just the amenities. Some people think of amenities such as cable television, swimming pools, and work-out rooms as non-essential budget items. It is important to remember that without amenities, many of the owners will be dissatisfied and may rally against an otherwise sound budget. This is not to say

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that cuts can't be made—just that they should be proportionate to other areas. Remember that these amenities are part of what the condominium members expected when they bought their units.

Don't squander surpluses. If you are in the enviable situation where the association has a surplus of funds, it may be reasonable to lower the monthly assessments, but it may also be a good idea to invest for a rainy day. You never know when things will change.

Get help if you need it.

As a director of an association, you have a responsibility to see that your actions are based on competent information. If you don't know how to create a budget, find someone who can help you. There may be someone qualified living in your association. Your property manager may be able to help, or the association may need to hire an accountant to help deal with all the issues. Once a budget template is created it is not difficult to update things for future years.

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NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

RESERVE STUDIES

Reserve Studies are long term forward projections of the costs to repair and maintain the common elements of a condominium. These typically look at what major expenses will occur over twenty or more years into the future, and calculate how much money the association should save in reserves each year to pay for those expenses.

Most condominium declarations require the association to include in its annual budget a contribution towards reserves for replacement of major building components like the roof, exterior paint, siding, parking lots, compactors, plumbing, etc. Many of these expenditures may not occur for many years, but when they do, they often require a large expenditure by the association. The objective of the reserve account is to allow the association to collect money each year as building components are aging, so that when each requires replacement, the association will have the funds to do so without any special assessments.

Generally Accepted Accounting Principles (GAAP) have increasingly looked for an association that has an obligation to collect reserves to have a qualified outside expert inspect the condominium, and make a recommendation on what the appropriate reserve contributions should be. This inspection and analysis of the building is usually called a Reserve Study. The state of California requires that any condominium with more than 50 units have a professional reserve study conducted on a regular basis, but Washington does not. Many property managers

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recommend their condominium clients have professional reserve studies completed and updated on a regular basis.

Reserve studies are often completed by trained construction professionals like Architects or Professional Engineers. Other construction professionals may be qualified to perform these studies as well. The basic process is to:

1. Identify the building components that the association is responsible to maintain. This involves a review of the Declaration and other governing documents that relate to the responsibility to maintain the units, the limited common elements, and the common elements. (Remember that who OWNS that piece of the building may differ from who DEFINES the repair method, who PERFORMS the repairs and who PAYS for the repairs.)
2. Evaluate the condition of each building component;
3. Determine when each component will next need repair and what that repair will be;
4. Estimate the cost for the repair or replacement of each of the building components;
5. Combine all of the above to calculate the savings required (reserve contribution) each year to prevent special assessments to pay for any of those repairs.

The presentation of the reserve calculations usually takes one of two basic forms.

Fully Funded Balance Calculation, where each building component has an amount each year to save for the future, and some number of years from when it was new until its replacement. (Example: a roof expected to last 20 years is now 7 years old, and would cost \$100,000 to replace. $\$100,000 / 20 = \$5,000$ per year to save. $7 \text{ years} \times \$5,000 = \$35,000 =$ a Fully Funded Balance for the roof today.) You must continue to save the annual amount,

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and the fully funded balance required will increase each year until the year the roof is replaced, at which point you should have all the money to pay for the new roof (if you have been collecting it).

If you add the fully funded balance amount for every building component together, you get a fully funded balance calculation for the condominium. This method does not deal well with inflation, since the future cost is increasing each year while you are saving based on the original replacement cost. Every update on the future cost of replacement will immediately reveal that the current reserves are not enough to fully fund the new calculated amount. An association's actual reserves are typically expressed as a percentage of the Fully Funded Balance. If fully funded is \$200,000, and you have \$80,000, you are 40% funded.

Cash Flow Analysis, where each future expenditure is put into a spreadsheet extending out 20 or more years; regular annual contributions are shown as well. The accumulated reserves will increase each year by the contribution, and be depleted by the repairs made that year. The contributions are set to prevent the accumulated reserves from ever falling below zero.

It is important for the board to understand how the reserve contributions are determined, and how the numbers today may change over time.

There are a number of consultants who have come to specialize in performing reserve studies, including Reserve Consultants, Ltd.² and Association Reserves Washington, LLC. We recommend that our clients address the need to fund reserves for major repairs well in advance of needing to make any significant expenditure, and a professional reserve study is one tool that can assist them. Some of the most contentious disputes

² Full Disclosure: Ken Harer was the founder of Reserve Consultants, Ltd, and has a continuing minority ownership interest in the firm.

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we have dealt with among condominium owners have resulted from unexpected special assessments to conduct major repairs.

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CHAPTER 14

INSURANCE

Virtually all condominium associations are required to obtain insurance by their governing documents or state law. Consult your governing documents to confirm what minimum coverage you must obtain. In addition to property insurance to cover the building and the individual units (apartments) from damage from fire and other catastrophes, you may also want to or be required to provide insurance for:

- Earthquakes
- Floods
- General Liability for the association's activities
- Automobiles
- Workers' compensation for employees
- Directors and Officers
- Employment activities
- Acts of terrorism
- Other possible risks

The purpose of insurance is to shift risk from the insured (the condominium association) to the insurance company. You purchase insurance to protect your owners from the financial cost of reconstructing your building in the event of a fire, or other catastrophe. Your insurance cost each year is a tiny fraction of the cost to rebuild. The insurance company takes your premium money, and that of many other building owners, and assumes the risk that if your building burns down that they must pay for it.

Single family home owners purchase their own insurance to cover the home and its contents. Condominium associations purchase insurance to cover the common elements and usually

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the physical property of the units, but not the contents of the units. Condominium unit owners must purchase their own insurance to cover the personal property in their unit.

Deductibles reduce annual insurance premiums by shifting the risk of small damage from the insurance company back to the association. Larger deductibles shift more risk and result in lower premiums. Some kinds of risk, for example risk related to mold, cannot be transferred to the insurance company because the policy language excludes it.

Typically, condominium insurance covers damage to the common elements and to the individual apartments for damage to the physical structure of the building. Some types of damage are not covered by insurance. If the damage is to the common elements (tree falls on roof), or caused by the common elements (roof leaks) then it is typically the association's responsibility to pay for the repairs and damage caused. (So if the roof leaks then the association pays for the damage to fix the roof, and pays to restore the apartment, but would not normally pay for damage to furniture from the leak). Insurance covers the association's responsibility for this kind of damage in excess of the deductible, and in accordance to the specifics of the policy.

A condominium association's governing documents should set out its obligations to restore and maintain the building. Usually this obligation to restore and repair is broader and more inclusive than what the insurance for the building will cover. First, insurance deductibles eliminate insurance coverage for small damage events. Second, the insurance policy will have exclusions for many kinds of damage, for example floods³ or earthquake. The result is that your association likely has a gap between what the insurance covers and what risks of damage and potential costs

³ "Flooding" can generally be defined as water moving over ground to enter the property. Water damage from busted pipes, leaky water heaters, blocked storm drains and other similar causes are distinct from flooding and should never be called "floods".

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the association actually faces. Associations should be aware of this gap and budget for it.

Other specialty insurance products can be purchased by an association to cover the risk of being sued for its activities as a corporation (often called general liability insurance), for the activities of the board and its members, and for specific risks not covered by typical property policies, such as earthquake or flood damage, and sewage back-ups.

Your governing documents should spell out the minimum insurance you must have. If your documents are silent, you can find guidance in the statutes governing your condominium. The association must balance the cost of insurance against what coverage they obtain. Most people understand that they can affect their premiums (the cost) by changing their deductible (the coverage). They also affect their premiums by adding additional coverage like flood and earthquake coverage, directors' liability coverage, acts of terrorism coverage, etc. As the association increases coverage to reduce the risk of unexpected losses, they increase their known expenses for insurance.

Each association must make its own decisions about what level of coverage, and what types of coverage they want to have as they balance the cost of the insurance against the risk they are protecting against. This analysis must also include looking at the deductibles used. The best example is for earthquake coverage, where often the premium is high, and the deductible is often 10 percent of the value of the building. So if you have a 50 unit building valued at \$10 million, (that's only \$200,000 per unit) with a 10% deductible, the insurance would not start paying until the association had spent \$1 million on repairs itself. (On average, this is about \$20,000 per unit for repair.)

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Shifting cost/risk of uninsured damage and deductibles to the unit owners

In addition to trying to balance the association's cost against the coverage provided to the association, associations must also balance the risks that the individual members are exposed to or protected from by the Association's policies that also benefit the unit owners.

Many condominium associations have begun adopting declaration amendments to shift the cost of the association's deductible from the association to the unit that suffers the damage. There is an assumption that the individual unit owner could acquire insurance to cover that deductible at a lower cost than the association. This allows the association to raise the deductible which lowers the premiums they pay as an association, and thus helps keep monthly dues lower.

The individual unit owners are expected to purchase insurance for their own units that would protect them from the cost of the association's deductible. The unit owner is expected to obtain insurance that would cover the damage to the unit, even if a common element is the cause of the damage, and even if the association has an obligation to provide insurance coverage for the damage to the unit.

At one point this may have been a genuine cost saving strategy, where each unit owner's share of savings for the association's insurance bill was greater than their individual cost to add the protection to their personal insurance policy. We are uncertain that this saving exists any longer. The cost of the repairs (and thus the insured loss) is the same whether the association pays for the coverage, or the unit owner pays for the coverage. The risk of the damage occurring is the same regardless of who has the insurance. If the insurance industry is efficiently sharing information (which is a safe assumption in these days of computer data sharing) then the cost of providing coverage and the premiums charged for coverage should be collectively the same

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regardless of who is paying the premiums and receives the coverage. The savings experienced by the association increasing the association's deductible will result in a reduced assessment to the owners (collectively) that is exactly equal to the additional premium that all the owners will pay to cover their risk of paying the association's larger deductible. The reduced condominium association dues will be offset by increased individual insurance premiums with no net savings to the owners.

In addition, the shifting of deductibles has had an unintended effect as insurance companies have reduced the scope of coverage they provide. Most declaration amendments that shift the cost of the deductible to the units also shift the cost of any uninsured damage to the unit. So, if there is no flood insurance for a building, and the bottom floor units are flooded, those unit owners will suffer not only the inconvenience of the water in their units, they will bear all the cost of clean up and repair. This is inconsistent with the risk sharing that is otherwise embodied in most condominiums where costs for damage flowing from the common elements are shared among all owners. Some units have much more risk of uninsured damage: ground floors risk flooding; top floors risk roof leaks.

As insurance companies exclude more kinds of damage, such as damage from mold or floods, the risk to some individual unit owners becomes greater with a deductible shifting provision in the declaration. We have had more than one client that had water intrude from the exterior of the building or another unit, only to discover that they were responsible for the entire clean up and repair costs.

Another matter important for associations is to make sure that the policy coverage for the building is sufficient. If you do not have coverage for the replacement value of the building, the association may have to pay for portions of the repair itself, either because the insurance money runs out, or because the insurance company determines that you were "self-insured" for that

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percentage of the building's value exceeding the policy coverage. So if they determine that you undervalued the building by 20% for insurance purposes (thus lowering your premium) then you only have 80% insurance coverage for any loss. You "self insured" the other 20%. To avoid being only partially insured, the cost to reconstruct the condominium should be reevaluated annually.

There are a number of types of damage that the insurance for your association likely does not cover—things like mold, fungus, slow water damage, floods, intentional acts, claims by one insured against another, and claims against property managers. It is important for each association to look at the kinds of risks they may face, based on the type of property they have, the environment they are located in, the amenities they offer (like a swimming pool) and the activities they perform as an association (like having employees), and make a determination about what insurance is appropriate and reasonable to purchase.

Again, balance the cost with the risk, but make sure that at a minimum you obtain that insurance required by law or by your governing documents. If you are unsure whether you have appropriate insurance coverage, you should seek assistance from your property manager or insurance agent. Often agents will evaluate your coverage or attend a meeting to explain what is and is not covered under your policy.

Insurance is not a substitute for acting responsibly as an association to protect the assets of the community, and will not cover all of the possible risks that face the association, but it does provide an important element of an association's responsibility to protect its members' homes.

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CHAPTER 15

WATER DAMAGE IN CONDOMINIUMS AND WHO PAYS FOR IT

A sewer backup, a leak, or a pipe break in a condominium that causes water damage to a unit implicates many different legal issues. The most important issue for unit owners and condominium associations is who is responsible for paying for the damage.

Where there is simply an accident, not attributable to negligence, recklessness or any intentional act, it is unlikely that a unit owner or the association could be responsible for the damage to someone else's property. Unless the governing documents of the condominium state otherwise, everyone bears the risk of loss for his own property in the case of accidental damage.

In the past, an association would often cover any type of water damage to common areas or units, regardless of the cause of the damage. This was because the association's insurance would often cover the damage, or because the association allowed all owners to share the cost.

Now, however, associations are particularly concerned with the rising costs of insurance that covers accidental damage. Insurance costs are becoming so prohibitive that many condominiums are being forced to purchase policies with deductibles of \$10,000 or more. These policies may not cover most types of water damage because the repair cost does not meet the high deductible. For this reason, associations may become less willing to cover costs for water damage to a unit if the association is not responsible. Where the association must repair common elements like the unit boundaries (walls, floors, etc) they

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may no longer pay for any interior finishes, personal property or clean up costs inside the unit.

Many associations may be assuming more costs than they need to, and pay for all the damage to a unit every time damage occurs. The unit owners may be legally responsible for some of the repairs or costs, and unit owners may be able to insure these risks at lower cost than associations can.

To Whom Do the Different Areas of the Condominium Belong?

In determining responsibility for property damage it is helpful to understand what parts of the building belong to a unit owner, and what parts are common areas belonging to the association members collectively.

The governing statutes, the Washington Condominium Act and the Horizontal Property Regimes Act, provide a general definition for the boundaries of a condominium unit.⁴ If the condominium declaration does not specify otherwise, a unit includes everything forming the unit up to and including the interior finished surfaces, such as paint, wallpaper, tile, grout, carpet and hard floors.

The condominium's declaration can change the definition of "unit" and "unit boundaries". This means that not all unit owners in all condominiums own the same elements of their units. Most Declarations modify the statutory language to reflect unique features of the condominium buildings. Some declarations, however, (particularly older ones) may not provide a definition of unit or unit boundary at all, in which case the statutory definition applies.

The association is generally responsible for the common areas. This may include the drywall and wall elements of the perimeter and bearing walls and sub-floor of the unit. Pipes and

⁴ RCW 64.34.204 and RCW 64.32.010(1);

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wires not wholly located within one unit or serving more than one unit, even if located within the walls of one unit, may also belong to the association as common elements.

The unit owner is responsible for everything inside the unit. This often includes the paint, wallpaper, carpeting, flooring, tile, grout, etc. It usually also includes the drywall and wall elements of interior, non-bearing walls, as well as portions of pipes and wires that are wholly contained in the unit and that serve only that unit. Sometimes drywall and plaster walls that form boundaries of the unit are part of the unit. Windows themselves are often the responsibility of the homeowner, but the window flashing is not.

It is important to look at the particular condominium's declaration to determine what belongs to the unit owner and what belongs to the association. Only the application of those documents, supplemented by the statutes, can define the responsibility of the unit owner and the association.

The Law Regarding Responsibility for Leaks

The law is clear where recklessness or intentional action causes damage to property. In such cases, the person who causes the damage is responsible for all the costs to repair it, and could be liable for additional damages, as well.

Where negligence is the suspected cause of the damage, the law is more complex.

In order for the court to find someone negligent, certain requirements must be met. The first requirement is that the defendant (i.e., the person who caused the damage) must have owed a duty to the plaintiff (i.e., the person who suffered damage). This duty may spring from a statute, from a contract, or from case law. In addition, the court must find that the defendant breached that duty, and that the breach caused the damage to the plaintiff.

The governing documents of the condominium may express duties on the part of the condominium association and on the part of the unit owner. The most common declaration

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provision regarding a unit owner's duties is that the unit owner is responsible for maintaining the interior of his unit.

The Washington Condominium Act provides that the unit owner has a duty to maintain his unit, and the association has a duty to maintain the common areas.⁵ The association's duty to maintain extends to the common areas that form the unit itself, for example, the perimeter walls, bearing walls, drywall, etc. Another duty expressed by statute, applicable to older condominiums, is that unit owners are to comply strictly with the governing documents under the Horizontal Property Regimes Act.²

The Washington Condominium Act generally holds boards of condominium associations to a standard of ordinary and reasonable care in maintaining common areas to avoid damage to unit owners.⁴ This gives the board latitude in making decisions. As long as a decision is reasonable, it is difficult to attack on legal grounds, even if the result is not as intended. This generally allows the association to allocate costs for repairs in any reasonable manner.

Many courts have examined the different duties owed by unit owners and associations when there is water damage. Generally, the case law does not provide particular duties on the part of the condominium association, but the cases recognize duties on the part of the unit owners to maintain their units.

One example is where a unit owner breached his duty to maintain the interior of his unit.⁵ The unit owner in an upper story unit let his shower leak, so that the water dripped down, damaging a lower unit. The shower head had been leaking for a long time, and there had been one inadequate effort to repair it. The owner of the damaged unit was able to recover on a negligence theory

⁵ RCW 64.34.328;

³ RCW 64.32.060;

⁴ RCW 64.34.308 requires the board to act with ordinary and reasonable care if elected by unit owners, and if appointed by Declarant, to act with the standard care of a fiduciary;

⁵ Ortiz v. Le WL 1399112 (Cal. App. 4 Dist.);

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because the court found the owners of the upper unit had a duty to maintain the interior of his unit; he knew that the shower needed maintenance and had not been repaired adequately.

However, in another case where the leak in an upper unit damaged a lower unit, the court did not find the upper unit owner breached his duty to maintain.⁶ In this case, the upper unit's washing machine hose burst, causing a flood in the lower unit. The upper unit owner showed that he maintained his unit and had no reason to know of any defect in the washing machine hose. The upper unit owner did not live in the unit, and had hired a property manager to maintain it. The washing machine had been serviced only three months before the hose burst, and nothing was wrong with it at that time. The unit owner was not responsible for the damage because there was no way he could reasonably have known that the damage would occur.

In lawsuits against condominium associations, unit owners have generally not been able to recover for water damage in their units. Most of the time, these cases involve accidents or "acts of God" where no one is at fault. For example, the court found that an association had no duty to protect the units from storm water damage or from damage caused by third parties.⁷ This was because the association had no way to control the things causing the damage.

In another case, a unit owner sued because of a sewer back-up in her unit.⁸ The court found that the association was not liable to the unit owner because the association was not negligent. The association did not know that the sewer would back up, and could not have reasonably taken steps to prevent the sewer back-up. In addition there was no proof that the unit owners themselves had not caused the back-up.

⁶ Antich v. McPartland, 740 N.Y.S.2d 728 (2002);

⁷ Wescott v. Burtonwood Manor Condominium Association Board of Managers, 743 S.W. 2d 555 (1987);

⁸ Smith v. King's Grant Condominium, 537 Pa. 51 (1994);

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In one Washington State Appeals Court case, the unit owners sued the association because condensation on their ceiling had dripped down onto their furnishings, damaging their couch and rugs. They also claimed that the condensation had caused mold on the ceiling, which the unit owners said made them sick and caused them emotional distress.⁹

In this case, the unit owners thought that there was a defect in the attic causing the condensation. They asked the association to fix it and to reimburse them for all of their damage, physical and emotional.

The association inspected the unit, and found no defects in the unit owners' attic. Their attic was just like the other units' attics, and other units did not suffer from the same type of condensation. One expert in the case thought that the type of condensation might have been an air conditioner that the unit owners installed in the unit.

The association decided to take no action, and let the unit owners deal with their problem. The court found that this was a reasonable course of action for the association to take. The association was not liable for any of the damage.

When there is water damage attributable to an accident not caused by negligence, recklessness, or intentional acts, the owner of the damaged property bears the risk of loss, and is responsible for the costs to repair it. Where there is negligence involved, the person whose negligence caused the water damage is responsible for the costs to repair it.

As always, check your governing documents and consider hiring a professional to assist you if you are not sure of the parties' rights and/or obligations regarding leaks. Insurance obligations and the insurance policies will affect the analysis

⁹ Schwarzmann v. Association of Apartment Owners of Bridgehaven, 33 Walsh. App. 397, 655 P.2d 1177 (1982)

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CHAPTER 16

NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

THE WHO, HOW, AND WHY OF CONDOMINIUM INSPECTIONS

There is sometimes confusion about what kinds of building inspections may be done for condominium buildings, who does them, and for what purpose. This is an attempt to summarize the most common kinds of inspections where an Architect, Engineer or other building professional might be employed to deal with your building(s). Included for each type of inspection is a very brief description of the scope of the inspection, who it is conducted for, when it might be done, and why.

Most inspections relate to the exterior waterproofing elements of the building that make up the “building envelope”; the combination of individual building components like the roof, siding, windows, and decks, that work together to protect the building structure and the residents from the weather. Inspections may be specific to a single building component or may encompass the entire building and grounds. An inspection may deal with current problems, or may try to predict the future performance of building components. Some inspections help plan for the future by recommending budgeted reserve contributions for replacement and repair of the buildings.

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The types of inspections discussed are:

1. Developer Inspections of Apartments converted to Condominiums;
2. Developers' Reserve Budget for Public Offering Statements;
3. Reserve Studies by Independent Consultants for Existing Condominiums;
4. Preventive Maintenance Plans and Inspections (New and Old Buildings);
5. Turnover Inspections When an Association Assumes control of a condominium;
6. Warranty Inspections Within Four Years of New Construction;
7. Specialized Individual Component Assessment;
8. Construction Inspections for Major Repairs or New Construction

Developer Inspections of Apartments Converted to Condominiums

These inspections are intended to identify major building components and determine their remaining useful lives so that prospective purchasers may make informed decisions when buying into an older building. They are often used as a reference to set the initial reserve contributions in the condominium budget. These inspections are conducted for the benefit of and are paid for by the developer, and often include only a few of the building components, along with very optimistic projected lives. Sometimes replacement costs for building components are included, but these are not required by the statute. Often useful lives will be estimated with the disclaimer "if properly maintained", which may exclude from the reserve budget expensive recurring work like painting, re-siding shingles, or tuck-pointing brick.

This inspection is a requirement of the Washington Condominium Act, RCW 64.34.415, and must be performed by a licensed Engineer or Architect. Since the developer hires the consultant and pays for the inspection, there may be no specific

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concern for protection of the buyers. The Condominium Act requires that the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium be included, and the developer must make a statement as to the expected useful life of each component.

Developers' Reserve Budget for Public Offering Statements (New Buildings)

This budget is intended to provide a figure for reserve contributions as part of the overall budget for the association. The budget may or may not identify major building components, estimate replacement costs and useful lives to allow prospective buyers to make informed decisions to buy. There is no requirement that any inspection be completed by a construction professional, or that all building components be included.

The Condominium Act only requires that the developer provide as part of the Public Offering Statement any current or proposed budget for the association. This inspection, if completed at all, is for the benefit of and paid for by the developer, often without specific concern for the protection of the buyers.

Reserve Studies by Independent Consultants for Existing Condominiums

These reports identify the building components that will require replacement or repair, estimates the remaining useful life of each, and the expected cost of repair or replacement. The purpose is to ensure that the association will have saved sufficient funds to maintain the buildings, or at least to ensure that prospective buyers are aware of future maintenance expense. These are much more comprehensive than reserve estimates by developers. One goal is to prevent special assessments in the future. When properly prepared, these will include major

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maintenance items that may be required as well as replacement of building components.

Depending on the professional completing the report, it may be limited exclusively to listing major components, costs, and expected life, or it may include information on maintenance issues, minor repairs required, and potential construction defects. Some consultants performing studies rely on standard formulas for expected lives and replacement costs. Others will review an association's actual past experience and adjust the costs and useful lives to the history of the association and the level of quality they wish to maintain.

Reserve studies are consistent with Generally Accepted Accounting Principles (GAAP), because a trained professional makes an assessment of the reserves required to maintain the buildings over an extended period of time. Reserve Studies may be conducted at any time after the creation of the condominium, and should be updated on a regular basis to reflect actual repairs and expenses, and the actual condition of the building components. Frequently associations will buy a reserve study only after a special assessment is required to pay for a major repair (like plumbing replacement) or when they have a significant backlog of repair work with inadequate reserves. Over the last decade, most professional property managers have come to consider this an essential inspection for the buildings they manage. Adequate reserves and a plan to maintain the buildings may also assist with resale of the units and budgeting each year to avoid shortfalls.

Preventive Maintenance Plans and Inspections (New and Existing Buildings)

These create a specific plan of inspections and services to be completed on a regular schedule. They may include daily, weekly, monthly, and annual tasks to be performed by the association and its employees, or by vendors and consultants.

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This process typically includes production of an annual schedule of maintenance, repairs and inspections, along with instructions for each task to be performed. Individual inspections are to determine the current condition of a building component, the need for repairs, and the rate of deterioration. Inspection and service reports should be reviewed over time to determine the best schedule to effectively maintain the common elements. These reports provide a record of the maintenance being conducted. Types of tasks to be scheduled could include annual fire safety inspections, gutter cleaning, landscape inspections, etc.

Government and commercial facility managers have long embraced scheduled preventative maintenance programs to ensure that inspections and routine tasks are completed on time, and that the most cost effective schedule of repairs is completed. Residential building managers have only recently adopted this practice. Preventive Maintenance programs help ensure that buildings are maintained in a manner that preserves the appearance and integrity of the buildings. They can also protect warranties provided by the developer, contractors, or manufacturers. Some new associations have these plans implemented to ensure that the association's obligation to provide routine maintenance is met, and the developer's warranty obligations are not compromised.

Turnover Inspections When Associations Assume Control of Buildings

This is an inspection intended to identify maintenance and construction problems in existence at the time the association assumes control from the developer. This scope could vary from creating a "punch-list" of minor repairs for the developer to correct, to identifying construction defects similar to a warranty inspection (below), to identifying maintenance activities the association needs to immediately start performing to keep the buildings in good condition. Often this is used to document known problems

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that the developer is still responsible for completing. The scope of the inspection may be to document each specific repair task (as in noting every location that paint needs to be touched up), or could document typical construction details that need attention, with the expectation that they would be resolved at all locations where they occur. An outside construction professional may be asked to give an opinion about what items the developer might reasonably be expected to fix, and what meets sound engineering and construction standards.

“Punch-lists” might also be prepared by unit owners through use of a questionnaire; association members might walk around and document minor problems; or a construction professional may be called in to complete such an inspection. This is sometimes done with the cooperation of a developer who is trying to make a clean transition from the developer to the homeowners’ association.

Warranty Inspections Within Four Years of New Construction

A general inspection of the condominium intended to provide an opinion as to whether the buildings are constructed in compliance with the Washington Condominium Act. RCW 64.34.445 requires that the buildings are: free from defective materials; constructed in accordance with sound engineering and construction standards; in a workmanlike manner; and in compliance with all laws applicable at the time of construction; and that the buildings are constructed consistent with the Public Offering Statement or other written plans and specifications provided by the developer at the time of sale of the units.

This type of inspection would review known problems identified by the homeowners’ association, and investigate the building for common construction defects typical for that type of building construction. This is primarily a visual inspection, with limited destructive testing to inspect the integrity of the building. Where specific problems are suspected or commonly found, extra

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attention is expended. Because a thorough inspection involves damaging the building, a balance between the damage made and the additional information expected to be found must be struck. This inspection is intended to sample pieces of the building to provide some assurance that the building either conforms or does not conform to the requirements of the statute and whether or not damage is occurring.

A warranty inspection requires expertise in both law and construction. This type of inspection must be completed prior to the warranty expiration (typically four years from the date the first unit is sold). If sufficient problems are discovered from a general review of the building, additional specialized investigation may be required at the direction of an attorney to identify every possible defect in construction. Inspections on individual building components may be required by separate experts who can credibly testify in court on specific building materials and construction practices. These inspections are typically completed under the direction of an attorney.

Specialized Individual Component Assessment (of Any Age)

This is an inspection and evaluation of an individual building component or problem area. Typical of this would be roof inspections, or leak investigations. The goal is usually to determine the exact causes of a problem so that remedial repairs can be made. Often a construction professional will not be called in until several attempts by contractors have failed to solve a known problem. Sometimes an assessment of different repair or replacement alternatives is completed, with a recommendation to the association

This work is usually performed by a consultant with expertise and experience with the specific building component. The primary goal is usually to correct the problem. Sometimes this type of inspection will be used to enforce warranties from manufacturers, contractors, and developers.

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Construction Inspections for Major Repairs or New Construction

This is an inspection of work during or at completion of construction by a contractor. This is done to help ensure that repair work contracted for by an association is completed as promised and in compliance with contract requirements and industry standards. Frequently roofs are inspected during installation by the association, and also by a manufacturer who may be providing a warranty.

These inspections are usually performed by a consultant with training, expertise and experience with the specific building component. The primary goal is to ensure that the work is done correctly so that it will perform well over time. Sometimes fees for these inspections are a percentage of the construction cost, other times it is done on an hourly basis. Photographs and detailed reports are often used to document the work performed.

Summary

The type of inspections and reports that construction professionals may provide for condominium buildings can vary considerably with the needs of the buyer. Typically they look forward to help plan for future repair and replacement needs (as in the form of a reserve study) or they help discover and explain specific problems that a particular building may be having (as with a warranty inspection). The third major area where condominiums can benefit is in the planning of routine repairs and inspections to efficiently and consistently maintain the buildings for their owners.

Selection of the consultant will depend on the type of service you need, and the audience you are speaking to. At times, a generalist who can provide advice on a number of building components may be preferable. At other times, specialists in one area are needed. Investigations and reports that might be reviewed by a court will require greater levels of professional certification to be convincing to their audience.

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CHAPTER 17

HOW TO CHOOSE A CONTRACTOR

Before embarking on any remodeling or restoration work, be sure you are hiring the right contractor. Below are some suggestions for making sure there is a good fit between you and your contractor. Hiring the right person or company will help you avoid future problems, misunderstandings, or liabilities you may incur on your project.

Legal Considerations

1) First, check with the Washington State Department of Labor and Industries to make sure your contractor is licensed and bonded. There may be information on their claims record as well. Call 1-800-647-0982 to find out, or do an online search at <https://wws2.wa.gov/lni/bbip/contractor.asp>.

2) Ask your contractor for proof of insurance, and how much insurance the company carries. Confirm the contractor's insurance does not exclude work on condominiums as an exception to their coverage (this is common in the industry). The minimum state requirement may not be enough to cover you in case of damage, depending on the type of project you are contemplating. Your contractor's coverage may need to be enough to compensate you for the loss of your entire home and its contents if the contractor is negligent, however, your property insurance may cover some or all of that loss. You do want adequate coverage in case an employee or subcontractor sues the association for injury incurred while working on your building.

3) Ask your contractor whether the people it hires are its employees or if they are independent contractors. You may not be able to sue the contractor for damage if its workers are independent contractors. In addition, be sure that all the

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employees your contractor has working on your project are covered by worker's compensation insurance. If an employee is injured on the job, and the employer has not paid worker's compensation premiums, the state may be entitled to reimbursement from the association. The worker may be able to sue for unpaid wages or injuries on the job as well.

4) Check with the Secretary of State to confirm the contractor's business status, and who the owner is. Check that any subcontractors are licensed, bonded and insured as well.

5) When anyone delivers materials or services to your condominium for your contractor, they have a legal right to payment. If your contractor does not pay them, they may place liens on your property and sue you for payment. Ask your contractor about its relationships with its vendors and about its payment and credit histories.

6) Find out about the contracts the contractor wants you to sign. Make sure you understand the language and what the terms are. If something goes wrong, does the contract set out what will happen? What are the remedies under the contract, and how will you enforce them if the contract is violated? Is there a way to settle disputes that may come up without the expense and delay of a lawsuit? We recommend contracts be prepared by your attorney or based on American Institute of Architects (AIA) standard forms rather than forms prepared by the contractor.

Non-Legal Considerations

1) Check on the reputation of your potential contractor. Ask for references for similar work, then call those people and ask them about their working relationship with that particular contractor. The length of time the contractor has been in business may be a good indicator of its reputable nature. Look at projects the company has done in the past; are they the types of projects you are contemplating for your own condominium?

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2) It is important to find a good fit between your philosophy and that of the company or the person you will be working with. Some things to consider:

- Do you prefer to have a small contractor, who does one job at a time, or do you prefer to have the security of a larger company with several different crews of workers, and who may have several projects going at the same time?
- Investigate the billing practices of the company before you enter into a contract. Find out what kind of down payment the contractor will want and what kind of payment terms it has. This should be clear in the contract. Are the invoices in a form that you can understand?
- How will owners communicate with the contractor (if at all)? Do you want a contractor with an office and staff that can assist you? Can you reach the person in charge of your job when you need to? Can you meet regularly about the job? Can you get help at night or weekends if emergencies arise?

3) Check with the Better Business Bureau in your area regarding any unresolved complaints filed against the contractor. In Western Washington, call (206) 431-2222, email info@thebbb.org or visit <http://www.oregonandwesternwa.bbb.org/start.html>.

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CHAPTER 18

CONDOMINIUMS BORROWING MONEY

Many condominium communities struggle with major expenses that exceed the current funds to pay for them. Often this is related to major repairs due to water damage, or necessary improvements to decks, roofs, or windows. The need for large expenditures is often immediate, and the ability to collect funds through assessments against the units may be limited due to the financial resources available to the unit owners.

Several condominiums have resorted to borrowing money as an association, and spreading the special assessment to the unit owners over several years to repay the loan. There is still a special assessment against the Units to cover the cost of the immediate expenses, but the owners have the opportunity to pay for that cost over a long period of time. The total cost will be higher because of the need to pay interest and loan fees, but the immediate burden of the special assessment will be reduced.

Banks that make loans to condominium associations have no collateral for the loan, because the association usually owns no property. The unit owners own the property, not the association. As a result, a loan taken out by an association is often considered an unsecured business loan, and will have a higher interest rate than a real estate loan taken out by an individual unit owner. The association typically is using its power to make assessments against the units as the security for the loan, and often must assign the right to make assessments and enforce collections to the bank in the event of a default by the association in repaying the loan.

It is almost always more expensive for the association to take out the loan than for the individual owners to refinance or

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take out a second mortgage for that unit's portion of the special assessment. Unit owners have real estate that can secure the loan, and the individual loans are common and competitively priced. Association loans in comparison are offered by few banks, require more time to process than individual loans, and have higher fees and interest rates. But many associations have members who do not have the credit or the equity to qualify for individual loans, and their boards determine that it is better to borrow as an association to meet the immediate need for funds.

The association must have the legal authority to borrow money. The governing documents may grant that power to the association or the board, but are more often silent. If the declaration is silent (meaning that it does not explicitly grant or deny the power), but grants to the Association all powers authorized by the Condominium Act or the Nonprofit Corporations Act, then the association should be able to borrow, since both of those acts give the association that power. Most banks will require that the association obtain a legal opinion from an attorney that the association has the power to borrow money before closing on the loan.

The terms (such as interest rates and principal amount) of loans to condominium associations are often uncertain until the time that all of the money required is advanced to the association. It is very common for a loan for construction work to be paid out by the bank only as portions of the construction are completed. During the months that construction is underway, the interest rate may float with the financial markets. The association will often only have the option of converting to a fixed rate at the end of the construction project. And because the project size and duration may not be predictable, the association may not know the true cost of the loan until many months after the loan agreement has been signed.

Many associations will have some owners who need the loan, and others that can pay in full up front. This creates a conflict

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because those who pay up front don't want to pay for the interest and fees that are caused by the loan. You will have some difficulties with accounting for the loan depending on how each owner has participated in the loan and how the loan is handled in the event of a unit sale prior to full repayment. Often the lender will require that the assessment amount allocated to a unit that is sold be repaid in full at closing.

The Board will have to make a number of decisions about any loan, including whether to have a fixed or variable loan, the length of the loan, whether the loan is a line of credit or in a fixed amount, how payments must be made, and how often. Some banks will require an association to move all of their checking and savings accounts to the lending institution so that the bank can keep track of the association's finances, and profit from servicing those additional accounts.

We strongly recommend that our clients budget and assess for major expenditures well in advance so that owners can make their own arrangements to finance required special assessments. If they must obtain a loan, the association should treat the process like any other major purchase. Obtain quotes from more than one reliable and trusted source. Follow the requirements of your governing documents to inform your owners and obtain any required approval. Read and understand any contract or loan agreements, and get help from professionals if you don't understand the contents.

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CHAPTER 19

RESTRICTING SATELLITE DISHES AND ANTENNAS

Ever since Congress passed the Telecommunications Act of 1996, community associations have been trying to find a way to cope with the rule protecting antennas and satellite dishes. A provision in the Act placed protection on satellite dishes and antennas so that everyone would be guaranteed access to video programming. This is still an undefined area of law, subject to interpretation by the FCC and courts. Our first recommendation is typically to find a compromise that allows owners to have a dish, in a way that does not offend the community.

The short answer to this question, “Can the owner install a dish?” is yes, but with some restrictions. It must not damage the common elements (roof, siding, decks). We recommend a stand on the deck or roof, weighted down so no holes are put in the building.

The Rule

A brief summary of the key parts of the FCC rule:

- A) The rule applies to satellite dishes under one meter in diameter, television broadcast antennas and other antennas needed to receive video programming services. (Let’s refer to them simply as “dishes”.)
- B) The rule only applies when the dish is placed on property that is in the exclusive use and/or control of the person seeking video programming services. For condos, this usually means only the unit and decks.
- C) No local governing body (including HOAs) may impair the installation, maintenance or use of the dish.

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- D) Impairment is considered to be 1) causing unreasonable delay, 2) causing unreasonable costs, or 3) precluding acceptable quality reception and/or transmission.
- E) The only exemptions are for legitimate reasons of safety or historic preservation.

These rules have placed condominium associations in a dilemma. Often condominium associations have use restrictions in their governing documents in order to preserve the external appearance of the community, maintain property values and keep people from being annoyed by their neighbors. In most circumstances there is a general presumption that condominium associations' restrictions on use are reasonable unless proven that they are not. However, the way in which the FCC has ruled on cases involving satellite dishes indicates that for this specific area, the burden is on the association to prove it is reasonable. In comparison, if an association were to ban dogs, the declaration could simply state "No dogs." The courts will generally infer one of the myriad of reasonable rationales that the association could have for this restriction and it will be upon the dog owner to prove that the rule is unreasonable. The FCC's decisions instead required that associations be careful and explicit in drafting dish restrictions because their presumption seems to be that any restriction on dishes is unreasonable.

What Condominium Associations Can't Do:

So where does an association's goal of preserving a uniform appearance come in? It's hard to say. The FCC's decisions regarding provisions in condominium declarations may be looked to for limited guidance—they basically show what declarations *can't* do to restrict the placement of dishes and antennas, but very little on what can be done.

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No Absolute Bans.

Before 1996, it had been common for condominium associations to completely ban satellite dishes. The federal rule invalidates those restrictions. Other communities banned satellite dishes where they were visible from certain angles. If the owner incurs extra costs or gets worse reception than she otherwise would get due to the limitations on where she could place the antenna, the restriction may be invalid and void.

Limitations on Placement May be Okay.

If an association limits the placement of a dish by listing the *preferred* placement locations of dishes, the restriction may stand up to scrutiny. This way the owner is obligated by the declaration to try the placement of the dish in the more discreet location first, but if they have impaired reception, they are allowed to move the dish to a less preferred location where reception improves. Condominiums probably can prohibit dishes mounted on exterior walls and handrails, but probably must allow them sitting on the deck itself.

Retroactive Application of New Restrictions to Dishes that were Previously Installed.

According to FCC decisions, an association can apply new restrictions to dishes that were installed before the restrictions were in place, *assuming that the new restriction complies with the federal rule*. For example, if a new restriction is based on a legitimate safety concern, it could be applied to dishes that were installed previously. If the association pays to relocate a dish, it is more likely to be an allowed new restriction.

Approval or notification processes.

The FCC has not ruled favorably when associations have tried to implement a consultation or approval process for people

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who want to install dishes. This is because the process results in an “unreasonable delay”. It is not quite clear what a “reasonable” delay might be because many dish providers boast same-day or next-day installation. Other associations have required a notification procedure where, at the very least, the board must be notified before or during the installation process. Anything that hints of a delay might not be acceptable to the FCC. However, if the common elements of the condominium are disturbed, then the notification is likely to be considered OK, since that is not within the exclusive control of the unit owner.

Multiple Dishes and Master Antenna.

There appears to be no numeric limit on the number of antenna or dishes being installed. The rule, however, only covers dishes *necessary* to receive service. Therefore, if there are two dishes that duplicate the same reception, only one of them is protected by the rule since the other one is redundant. Similarly, if a building already has a master antenna or dish that would provide the same quality reception and service as the one the owner wishes to get, the rule does not protect the installation of what is essentially a redundant dish.

Exclusive Control and/or Use.

The rule only protects the dishes being placed on areas that are in the exclusive control and/or use of the person desiring service. This means the rule does not protect against restrictions on the installation of dishes in common areas or some limited common areas. If the owner generally has no roof access, there is no obligation to allow placement of the dish on the roof. Some condominiums designate patios or balconies of units as limited common areas. However, even if a balcony is considered an area of exclusive control, the space *beyond* the balcony might be a common area (e.g. if it is part of a courtyard.) Consult the

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governing document carefully to help determine what exactly the areas of exclusive control and/or use are.

Using poles or masts.

The use of poles or masts to increase the height of dish may or may not be acceptable based on whether it is necessary for acceptable quality reception and whether the height creates safety concerns. The FCC has recognized that masts over 12 feet may be a safety concern for local authorities.

For more information about the FCC's positions on the issue of satellite dish installation, see <http://www.fcc.gov/mb/facts/otard.html>.

We recommend that associations that are concerned about the installation of satellite dishes proactively develop rules and regulations that allow owners to install them in a way that is consistent with the federal regulations. Provide a place or a method of installation that the association prefers the owners use, and provide some means of allowing a dish to be mounted (like a stand weighted down to their deck or the roof) that does not cause damage to the common elements. Consider how the wire will pass from the satellite dish to the interior of the unit as well.

These rules should be distributed to all owners and provided to all prospective owners with the resale certificate.

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CHAPTER 20

RESTRICTING PETS IN YOUR COMMUNITY

One of the reasons people choose to live in condominiums is the common rules that everyone agrees to live by when they move there. The rules are found in condominium declarations, bylaws, rules or regulations. Among the most common rules are those concerning pets. The enforceability of rules will be affected by where they are contained: in the declaration, the bylaws or other documents. Amendments to the declaration that have been voted on by the association as a whole and then recorded with the county will logically carry more weight than rules passed by the board alone. If a pet ban is enacted after owners with pets have purchased a home, those owners will probably be exempt, or “grandfathered”. If your association is governed by Washington’s Horizontal Property Regimes Act, any use restrictions must be amended to the declaration itself in order for it to be enforceable. If your governing documents already restrict pets and you discover an unauthorized pet, here are some things to consider:

Restrictions Must be Reasonable

Some of the landmark court cases in rule enforcement in condominiums have involved an association’s attempt to evict an unauthorized cat or dog. Generally, these cases allow an association to enforce pet restrictions if they are reasonable when applied to the entire community. The rationale is that all owners were put on notice and agreed to the restriction when they purchased a home there. In Washington, the issue is not settled, but the Washington Supreme Court* seems to agree with the courts in other states that any restriction on use of a unit (including

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owning pets) must be reasonable. The question then becomes “What is ‘reasonable’?”

Here are some plausible purposes to ban some or all pets:

- People object to animal droppings.
- Barking and other noises may disturb neighbors.
- People with extreme allergies want to live in a place free from animals.
- Animals may cause property damage.
- Some people are afraid of animals.
- Animals may attack or otherwise pose a safety issue.

Any of these purposes (or some combination of them) make it possible that the restriction against pets has a reasonable basis. In Washington, while the standards for reasonable use restrictions have not been fully resolved, the state Supreme Court has cited to a number of cases from other states in which there is a presumption that a restriction is reasonable unless proven otherwise. But reasonability is not just a matter of why the rule was made, it is also an issue of how it was written and applied. Courts look for arbitrariness and violations of public policy or constitutional rights.

Objective v. Subjective Restrictions

When drafting a rule to ban pets, many associations object to particular criteria (e.g. “large dogs”). The problem is that the criteria people really care about are often too subjective to measure well. “Large” or “noisy” may mean different things to different people. These kinds of subjective descriptions are in a practical sense less enforceable than a more objective one such as “animals over 20 pounds”.

Even objective, easily measurable criteria, have the potential to be problematic because the objective category must not be arbitrary. For example, there is some ongoing litigation regarding a ban on pit bull dogs. There may be legitimate concern

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for the safety of owners if pit bulls are allowed, but pit bulls owners argue that to single out pit bulls is arbitrary and unreasonable since many other breeds are also prone to attack and cause harm. We recommend that pet restrictions use broad objective terms that can be evenly applied: “No dogs.” If more specificity is desired, it is possible to craft language that focuses on animals with a history of dangerous, violent or otherwise inappropriate behavior, or to specify by height and weight. It may also be wise to delegate some rule making authority to the board to adopt the specific criteria. This way, as the community changes, so can the rules about types of pets permitted.

Enforce Restrictions Uniformly

Many associations go years without enforcing their governing documents’ rules on pets because there have been no problem animals. Many dogs and cats are cute, quiet and loveable with owners that clean up after them. Then one day a canine menace moves in and you want to enforce the rules. Even if the pet in question is clearly offensive and clearly in violation of the rules, you may have a problem if you fail to enforce the rules uniformly against all pets. The pet restriction may be reasonable, but the *enforcement* of it might not be if you only single out that one dog. Your choices may include: a) enforcing the rule against all violators of the restriction; b) finding a compromise with the dog owner that resolves the concerns of the neighbors thereby removing need to enforce the rules; or c) ignoring the pet restriction in the governing documents and pursuing the offensive behavior under some other provision of the governing documents.

A client association once asked us to help enforce their declaration’s pet provision barring all pets. They didn’t want to enforce the rule against the twelve cats in the complex — just against a Rottweiler who they happened to mention was owned by

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a homosexual African-American renter. That doesn't sound reasonable, does it?

Service Animals and Emotional Support Animals

Even if your pet restrictions are fully enforceable, you will have to make reasonable accommodations for service animals like seeing-eye dogs, and for emotional support animals. The federal and state Constitutions, in combination with the Americans with Disabilities Act (ADA) and the Fair Housing Act protect disabled owners from enforcement of pet restrictions because they would cause a form of discrimination. Service animals are not pets according to the Fair Housing Agencies of Washington State.

We don't recommend that an association board try to determine whether or not a resident is disabled. If you doubt whether the owner is disabled, ask the owner for a written determination of disability from a health care professional. If they produce evidence from a health care provider that they are disabled and that the animal is a service animal necessary for coping with their disability, the association will have to make "reasonable accommodations" for the resident in question. What constitutes a reasonable accommodation may vary according to the circumstances. If a service animal attacks people or causes unavoidable allergic reactions to the people living next door, it is possible that no accommodation can be made (since it would violate the rights of the neighbors). You are responsible for making an effort to accommodate.

Most government agencies in Washington State consider "emotional support animals" to be service animals which are exempt from pet bans in community living as well. These animals are distinct from service animals because they are not trained to perform a function such as seeing for a blind person or hearing for a deaf person. Their presence aids the disabled individual by giving them comfort needed to deal with their ailments. Someone with an anxiety disorder may not be able to function normally

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without their furry companion. For this type of animal, you may still require a note from a health care professional that they need this animal for medical reasons; and again, accommodate as is reasonable.

Some suggestions:

Make sure that anyone looking to purchase a home in your community understands how the rules will apply to them. Often problems with pets could have been avoided if the purchasers knew the rule before they bought. Emphasize this rule in the resale certificate.

People's relations with their pets can be very personal. Be especially careful to be friendly and amiable when confronting an animal owner about their animal. It is possible for an association to make exceptions to rules if documentation supports the selective non-enforcement of the rules.

**Shorewood West Condominium Association, v. Sadri*, 140 Wn.2d 47 (2000)(Favorably citing *Noble v. Murphy*, 34 Mass. App. Ct. 452(1993); *Nahrstedt v. Lakeside Village Condominium Ass'n*, 8 Cal. 4th 361(1994)).

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CHAPTER 21

NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

NOISE: THE DULL ROAR OF CONDOMINIUM LIVING

There doesn't seem to be anything quiet about living in a condominium. Between the owners and the pets, the televisions and music, the vacuums and the plumbing, there is no shortage of sources for noise complaints when it comes to condominiums.

Many buyers fail to realize, or simply don't understand, that owning their home does not give them free reign to live as they please when they purchase a condominium. New owners are frequently surprised at what they can hear – and who can hear them – when they move into their new home. Complaints about noise are common from new owners and current owners alike, and often come to the board as a demand to make someone or something stop. The board then finds itself asking “What do we have to do to address these complaints?”

Have Established Rules. Most declarations include a “no noxious or offensive activity” clause. This means the board can use the declaration to request an owner stop activity that is clearly unreasonable from the neighbors' or community's perspective.

Even more effective is having a set of rules and regulations in place that address the big issues – such as when there are quiet hours, what are acceptable floor coverings, and other commonly complained of activities that relate to noise (i.e., wearing heeled shoes, playing musical instruments). If the community as a whole adopts rules that reflect the association's

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philosophy about neighborly living, you'll have an easier time pointing owners toward the standards they need to abide by. If an owner refuses to behave in line with those rules, the association can turn to fines or other properly adopted discipline tactics to discourage improper behavior.

But even the best rules will not solve the problem for some kinds of noise. Plumbing noise from water running or toilets flushing can often be heard several floors away, and cannot be reasonably regulated. Some noise you just have to live with.

Hard Surface Flooring. Many condominium declarations now contain specific prohibitions against removal of existing carpet and the installation of wood or tile floor coverings. Downstairs neighbors often demand the Board enforce these requirements. More problematic is when the governing documents are silent, and the floor has already been installed.

It is possible for an association to amend its governing documents to very specifically address sound transmission qualities of floors, ceilings, and walls. The building code has minimum sound transmission rates for floors and walls in multi-family buildings. We know one client that has a fixed standard the floor assembly must meet if an owner changes the floor covering. If the floor is changed and a neighbor complains about noise, the association hires an acoustical engineer to come in and test the floor. If the floor passes the test, the complaining neighbor pays for the test. If the floor fails, the floor owner must pay for the test and also modify the floor so that it will pass the test.

Some associations provide construction specifications to their owners for the methods and materials that can be used by an owner replacing a floor. This prescriptive approach allows owners to enhance the value of their units by upgrading the flooring, but without raising the cost excessively, or disturbing the neighbors. With the assistance of acoustical engineers and attorneys it is possible to provide objective enforceable criteria for construction

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and sound transmission, but most associations find the cost to put these in place too great compared to the problems they address.

Make Owners Aware. Make copies of your rules and regulations readily available to all owners. Post the rules in the common areas or on the community website, and pass out a set of the rules at every annual meeting. Give new owners a copy of the rules as part of their welcoming correspondence (even though they get a copy with the resale certificate). Avoid having an owner challenge a noise complaint based on their ignorance.

Give Owners the Benefit of the Doubt. If a member is complaining about their neighbor's noise, ask if the member has taken the time to let their neighbor know about the problem (in person or in writing). Often, owners can work out noise issues between themselves if they make an effort. Don't encourage owners to "fight it out", but rather to take reasonable steps to address the situation before turning to the board for help. If it's not possible for owners to communicate with one another, send a letter describing the problem and remind the noisy owner about the rules. This will often address the behavior without resorting to more strict action by the association, such as fining the owner.

Board members should evaluate for themselves if the noise complained of is unreasonable before taking any action.

Help Owners Adjust Their Expectations. Remind owners that you are living in a community and must all co-exist. You can't change that an owner has an upstairs neighbor, but you can change what downstairs neighbors expect from those above them. There are times it is reasonable to expect owners to make an effort to be quiet (early morning or late evening hours), and times owners should expect to hear the people around them (the dinner hour, weekend days). If owners have a similar

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understanding of what activities are reasonable at what times, they will complain less about minor annoyances.

Owners should also understand that quiet does not mean silent. There will always be ambient noises in a condominium. People walking in common areas, moving around their units, and generally occupying the space results in some noise. Other factors, like the location of highways or dense foliage around the condominium, will affect the noise level. If your neighborhood is noisy, an owner might not notice much in the way of noise around them in the building. But if your neighborhood is very quiet, you may hear every step of your neighbor. When owners understand *some* noise is inevitable, there are fewer complaints.

Understand Your Legal Obligations. We once had a client spend tens of thousands of dollars rebuilding the ceiling of a unit to make it quieter – only to find out that they had no obligation to make the repair, and the repair did not work! That was an expensive way to learn they should have consulted their declaration (and perhaps a professional if it wasn't clear from the governing documents) about what they should do when the owner complained about the noise.

Most condominium declarations make no representations about sound, meaning no guarantee that the units will be quiet. When developers sell units for the first time, the Public Offering Statement and sales agreement usually contain an express disclaimer about noise; the developer says outright that units are not soundproof. We have yet to see a condominium declaration that made any representations about the sound quality in units and neither of the applicable state statutes contains language that can guide an association when it comes to questions about noise.

Because of this void, associations can generally respond to a request to make the units quieter by stating there is no legal obligation to do so. If owners want their units quieter, they can incur the cost themselves to enhance the soundproofing. Owners

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can also negotiate with their neighbors to create a more harmonious environment for each. Short of enforcing existing rules, you are not usually required to make a unit quiet.

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CHAPTER 22 – RENTAL RESTRICTIONS

CHAPTER 22

NOTE: Please contact Condominium Law Group for current information on this topic as this information has changed.

Restricting the Renting or Leasing of Units

The Thoughts Behind Rental Restrictions

Many condominium communities struggle to maintain a cohesive, involved community where owners live in all the units. When owners move out and renters start to move in, alarms sound for the board and owners. Questions inevitably come up such as: What will happen to our property values? Will owners or new buyers be able to obtain financing? Will the renters respect community rules and take care of the property? Will investor owners have the same priorities as resident owners? These are legitimate questions for owners to ask, and more and more frequently we see condominiums adopting “rental caps” to prevent owners from becoming landlords. Rental caps typically limit the percentage of rented units to between ten and twenty-five percent of all units.

Rental caps address some, but not all, of the fears voiced by owners when renters start moving in. A rental cap will generally protect an owner’s ability to obtain financing from lenders like Freddie Mac and Fannie Mae, but only to the extent the financing relates to the owner/tenant ratio in the condominium.

A rental cap will likely help your property values remain in line with the local market because the value to buyers wanting to live in owner occupied communities is increased. But it will eliminate investors from the pool of potential buyers. A rental cap will not force your owners to care more about the appearance of common areas or to invest more of their time in the care and upkeep of the property or the community.

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Finally, it's not safe to assume that resident owners will respect and follow the rules of the community any more than tenants. The attitude of a resident towards the rules may have little to do with whether they own or rent, and more to do with their personal philosophy of how much they are willing to respect their neighbors.

What Requirements are There for Putting a Rental Cap in Place? Both the applicable statute and your declaration will have specific requirements that must be met to put a rental cap in place. Adopting a rental cap for your condominium is a restriction on the "use" of property, since an owner would not be able to rent their property if the cap was met. Restricting the use of property requires a declaration amendment for both Old Act and New Act condominiums. It cannot be enforced if done by rule or in the Bylaws.

The difference between Old Act and New Act condominiums is the percentage vote from the owners that is needed to pass the amendment. Your declaration sets a threshold of owner approval necessary to pass any declaration amendment, including a rental restriction. Your declaration can set the threshold higher than the statute; it cannot set the threshold lower.

If your declaration was filed before July 1, 1990, (Old Act) the statute requires approval from at least sixty percent of the owners for an amendment, including a rental cap. RCW 64.32.090(13). We frequently see Old Act condominiums require sixty-seven or seventy-five percent approvals from all owners for this type of amendment.

If your declaration was filed on or after July 1, 1990, the New Act has different requirements. New Act condominiums have a more difficult threshold for passing a rental restriction amendment since the New Act requires at least ninety percent of the ownership to approve a restriction on use of the property. RCW 64.34.264.

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In addition to a vote of the owners, most declarations contain provisions for the protection of “mortgagees” (banks or other lenders). Your declaration might build in a protection for mortgagees requiring that notice be sent to the mortgagee of every apartment about the declaration, and obtain written approval from a certain percentage (i.e., 51%, 67%, or even 75%) of those mortgagees. This may just mean sending a letter with a copy of the proposed amendment to the mortgagees, but it can take significant time and effort, especially if a mortgagee actually responds. Generally, lack of response from mortgagees within a specified period of time is considered “implied” approval of the amendment. This may require the assistance of an attorney to review your governing documents and determine exactly what is needed to adopt a rental restriction.

Last, but not least, your declaration may set out specific procedures for amending your declaration, such as requiring a meeting of the owners to discuss any proposed amendment. Be sure to read your documents and consult a professional if you have questions about what might be required. While it may be challenging to obtain the votes necessary, we have several clients who have accomplished this change.

How does the Board Get Owners to Approve?

Once your board has decided that a rental restriction is in the best interest of the association, you may ask yourselves how you’ll get the required percentage of owners to agree. After all, you might think it’s in the best interest of the group but when you start talking to owners about taking away their property “rights”, many owners get nervous.

Discuss the pros and cons of a rental cap with your owners. Remind owners of the underlying reasoning which made the board decide a rental restriction was a good idea. For example, give your owners information about financing concerns

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and property values; or breakdowns from the budget explaining how a high rental population has impacted the common expenses. If owners can understand the board's reasoning, they are more likely to vote in favor of the action proposed by the board.

Consider “grandfathering” current rentals. If an owner is currently renting out their property and can continue to do so for a period of time or throughout their ownership, you are much more likely to obtain their approval. Simply put, if the amendment does not affect their ability to keep operating as they are, then they have no reason to object.

Adopt a hardship exception. Give the board discretion to permit rentals when an owner is in need. Inevitably owners will ask “What if something happens to me and I need to rent my home?” (For example an owner called up for military service.) Having some assurance the board will be able to consider an individual situation outside of the rental cap can go a long way towards gaining owner approval.

Define who is an “Owner”. We often write rental restrictions to include a “related party” definition so that immediate family members who live in an owner's unit are not considered renters. The concerns that generally accompany having renters in a unit are not as strong when family members are the tenants, since they often will care for the property and their community the same as any resident owner. Don't forget to consider how a beneficiary under a trust will be treated – owner or renter? – as the use of family trusts and other business entities to protect family assets is increasing.

Remember that you are adding management duties.

A rental restriction will not manage itself, so don't forget the board's duties which will accompany the passing of an

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amendment. Someone will need to keep track of what units are rented and what units want to rent. There will be owners' names and contact information and renters' names and contact information to keep track of. You might also have move-in and move-out fees, rental processing fees, and perhaps notices and fines to owners for bad renter behavior. Depending on the specifics of your rental process, there may be applications and leases to keep in the association records and if a wait list is necessary it will be someone's duty to monitor who came first and give required notices. The board should be cognizant that putting a restriction in place may take effort from the ownership or the property manager to maintain it.

Tie up the loose ends.

Again, don't forget to read your declaration and know what the requirements are for your community. Make sure you give proper notice to the owners (and mortgagees if necessary), and vote as your declaration requires. This means, don't have a mail-in ballot if your declaration and/or bylaws don't permit a vote by mail.

Associations that have been successful in passing these restrictions have usually had some owners willing to go door to door and explain the amendment, and collect necessary votes. You need to put in the legwork necessary to round up enough proxies and in-person attendance to get the amendment passed.

After all of your effort evaluating the community's needs and drafting the amendment and getting to a vote, it's difficult to watch an amendment fail for lack of participation by the owners.

Record the amendment once it passes. An amendment will not become effective until it is recorded, so don't file the original away in the association's records without making it part of the public record in your local county recorder's office.

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GLOSSARY OF CONDOMINIUM TERMS

TERM	SIMPLE DESCRIPTION
Allocated Interest	The percentage of the physical property owned by a particular Unit Owner. The total of all owners of an association must add up to 100%. This determines the Unit Owner's share of common Assessments, and often the votes they have for any matter decided on by the Association.
Amendment	A legal change to a document that affects the rights or obligations of the owners. Any governing document can be amended by some method. Some by a simple vote of the Board, others require 100% approval by the owners and the lenders for the Units.
Annual Meeting	Meeting of all members of the Association at which time information is shared and action items may be voted on by the full Association. Usually held about the same time each year, and includes the election of Board Members
Apartment	"Old Act" term for a Unit in "New Act". This is piece of the property owned exclusively by each member of the Association.
Articles of Incorporation	The legal documents filed with the Secretary of State to create a Corporation. "New Act" condominiums are required to be a Corporation.

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Assessment	Any money the Association requires each unit owner to pay. The annual budget is typically broken into equal monthly assessments for each Unit. Construction projects or unanticipated expenditures may have Special Assessments. Fines are an Assessment against only one unit.
Association	The group of all owners of a condominium. If you own a Unit you are a member of an Association that manages the condominium. Most are non-profit corporations.
Balance Sheet	The comparison of all the money the Association has against all of the debts the Association must pay. Typically created at the end of each month and at year end from an Association's records.
Board, or Board of Directors	The elected members of the Association who have the power to make decisions and take action for the Association.
Board Meeting	A meeting of just the Board Members to conduct the business of the Association. Typically will occur monthly, but could be more or less frequent.
Board Members	The members of the Association elected to manage the affairs of the Association. Typically a President, one or more Vice Presidents, Treasurer, and Secretary. The Bylaws establish the number and voting procedures.
Budget	A forward projection of expenses for the next year, used to set the monthly Assessments for each unit. Includes all expenses for insurance, utilities, management fees, cleaning, landscaping, repairs, etc.

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Bylaws	The procedures by which the Association conducts its business. Typically discusses meetings, elections of Board Members, powers of the Board, etc. This must be adopted by the Association and can typically be amended only by a vote of the Association.
CGL Insurance	"Commercial General Liability". Describes one type of insurance policy carried by most Associations and contractors. This insures the Association for things that it does.
COA	Condominium Owner's Association. See Association.
Collection Policy	Established procedures adopted by the Association or Board to keep collection activities fair and consistent.
Collections	The process of forcing a Unit owner to pay Assessments that they failed to pay on time.
Common Area	See Common Element. Sometimes thought of as the physical areas like a parking lot or playground rather than something like the roof. They are all Common Elements.
Common Element	Portion of the physical property owned collectively by all the members of the Association. Typically includes the roof, exterior walls, windows, parking lots, and anything shared by all owners.
Condominium	The physical property. Includes the buildings, the units, and all other common real property owned by the members of the association.
Condominium Act	RCW 64.34, or the "New Act", passed on July 1, 1990.

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Contractor	A person or entity licensed by the State Department of Labor and Industries to perform construction work and repairs. Requires posting of a bond and purchase of Commercial General Liability insurance.
Conversion	The process of taking an apartment building and converting it into Condominiums so that the apartments can be individually sold.
Cooperative	Similar form of shared real property to a condominium, but each member owns a share of a corporation that collectively owns all of the property including the apartments.
CPA	Certified Public Accountant.
D & O Insurance	Directors' and Officers' Liability Insurance. Protects Board members from lawsuits for their conduct acting on behalf of the Association. Will not protect them from intentional bad acts or acting outside their authority.
Declarant	The person or entity that forms the Condominium by recording a Declaration. More commonly known as the Developer.
Declarant Control	The period following the creation of the Condominium during which the Declarant appoints or controls the Board of the Association, and makes all the decisions about the Condominium management and operation.

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Declaration	The document that is recorded with the County to describe the physical property that is the Condominium, and to describe each Unit within the Condominium. Includes many restrictions and procedures that affect the property. This is what creates the Condominium and all of the Units.
Deductible	The amount of money that an insurance policy holder must pay out of pocket before the insurance company will pay for any covered claims. The policy holder self insures this amount.
Director	A member of the Board of Directors.
Due Process	A phrase that stands for the right of an individual to be heard on a matter before a decision that affects them is final. May relate to fines assessed or permission denied.
Fee Schedule	A list of fees payable by owners for specific activities like "Move in" fees, Cabana rental fees, and Resale Certificate fees.
Financial Statements	Collectively the Balance Sheet and Income Statement, which tell the story of the Association's monetary position.
Fine Schedule	A list of fines Assessed against Owners for violations of the governing documents. Often enforceable only if published and provided to all Unit Owners.
Foreclosure	The act of taking property away from its owner in order to repay a debt secured by the property.

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Governing Documents	Collectively the documents that control the ownership and use of the condominium. Includes Declaration, Surveys, Bylaws, Rules and Regulations, and Articles of Incorporation.
HOA	Home Owners' Association. See Association.
Horizontal Property Regimes Act	RCW 64.32, or the "Old Act", effective 1963.
Implied Warranty	The four year warranty of quality construction provided by statute to protect purchasers of new condominiums.
Income Statement	The comparison of the expenses and receipts of the Association, typically totaled at the end of each month and at year end.
Lien	A document recorded with the County to put everyone on notice that a debt is owed by the property owner, its amount, and to whom it is owed.
Limited Common Element	Portion of the physical property owned collectively by all members of the Association, but the use of which is restricted to one or a few members. Examples: a deck next to a unit; a parking space; a storage locker.
Meeting Minutes	Document that reflects the actions taken and matters considered by the Association or the Board at its meetings.
Member	Every Unit Owner is a Member of the Association automatically.

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Mortgagee	A lender who helps an owner buy a Unit, and who retains a security interest in the Unit.
New Act	Washington Condominium Act.
Nonprofit Corporation Act	RCW 24.03 and/or RCW 24.06.
Officer	A member of the Board of Directors who has specific duties assigned, such as the President or Secretary.
Old Act	Horizontal Regime Property Act.
Personal Property	Things that are not tied to real estate or physical property. Includes cars, furniture, kitchen utensils and clothes. Things that the Unit owner must insure for themselves.
Property Insurance	This insures the physical property of the Condominium, and usually the Units, against physical loss or damage. Does not include the contents of the Units, but often includes carpet and fixtures within the Units.
Property Manager	A person or firm hired by the Association to do bookkeeping and carry out the Association's activities as directed by the Board.
Proxy	Writing by one Association Member giving its vote to another person. May be for a specific vote, or a general power to vote for that person on any matter.

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Public Offering Statement	The document prepared by the Declarant for the first sale of each Unit, to provide information for new condominium buyers to make informed decisions about their purchase. Includes information about rights and obligations of the Unit Owners.
POS	
Quorum	The minimum number of Association (or Board) Members required to meet together to take action for the Association (or Board).
RCW	Revised Code of Washington. The state laws that govern all activities in the state of Washington.
Records	Includes Financial Statements, paid bills, cancelled checks, meeting minutes, contracts, or any other written document received by, created by, or sent out from the Association.
Resale Certificate	Document prepared by the Association for potential buyers to provide them adequate information to make an informed purchasing decision. Tells the buyer all the rights and restrictions of ownership. Prepared for every sale after the first sale.
Reserve Study	A long term future projection of major maintenance and repair expenses to help the Association budget.
Reserves	Money collected for some specific type of future expense. Often Associations are required to have Reserves for insurance and for major maintenance and repairs.
Resident	A person living within a Condominium unit.

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Rules and Regulations	Documents that govern ownership and use of the Condominium and Units, typically adopted by the Board or the Association by a majority vote.
Special Meeting	Meetings of all Members of the Association to consider matters outside of the Annual Meeting Cycle. May be called by the Board or some percentage of the Owners to consider any item on which the Association might act, including removal of Board Members.
Tenant	A person who rents the physical property that is the Unit.
Transition	The time when the Declarant stops managing the affairs of the Condominium and the new Unit Owners elect their own Board.
Unit	"New Act" term for Apartment in the "Old Act". This is the piece of the property owned exclusively by each member of the Association.
Unit Owner	The legal person that holds title to a Unit. This may be a single person, a married couple, a corporation, trust, or other form of legal entity.