

Homeowners Associations

Things You Should Know

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Charities & Nonprofit Education Program**

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Disclaimer:

Nothing presented today should be construed as legal advice, either by the presenter or by the Office of the Secretary of State.

We strongly recommend that if your association has issues that need legal resolution, you retain the services of a licensed attorney.

Please turn off your cell phones and hold your questions until the end of the presentation.

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Types of Owner Association / Properties:



HOA, COA, Co-op
 Single Family plats
 Condominium “plats”
 Townhouses
 Mixed use projects
 Master associations
 Common maintenance without association

Important Definitions:

- ▶ **Association:** Legal entity whose members are owners of certain residential real estate. May be incorporated or an unincorporated association.
- ▶ **Governing Documents:** Articles of incorporation, by-laws, CCR's (covenants, restrictions and reservations), plat, rules and regulations of the association or other document(s) granting the association authority.
- ▶ **Board:** The body with the primary authority to manage the association.
- ▶ **Quorum:** The number of persons who must be present in order to hold an official meeting and conduct business.

Important Definitions (cont.)

- ▶ **Common Areas:** Property owned or maintained, repaired or administered by the association.
- ▶ **Residential:** Property the use of which is restricted primarily to residential or recreational purposes.
- ▶ **Reserve Studies:** An in-depth evaluation of a property's physical components and an analysis of its reserve funds.
- ▶ **Assessments:** An amount of money levied by a community association and its property. Also commonly known as "association dues".

Scope of CCRs: (Covenants, Conditions, Restrictions, reservations)

- | | |
|----------------|------------------------------------|
| ▶ Enforcement | ▶ Use restrictions |
| ▶ Amendment | ▶ Dispute resolution |
| ▶ Insurance | ▶ Additional property |
| ▶ Easements | ▶ Architectural controls |
| ▶ Association | ▶ Budgets and assessments |
| ▶ Common Areas | ▶ Collection of assessments, liens |

Should You Incorporate?

- ▶ Not required
- ▶ Strongly recommended
- ▶ Limits liability of owners and board
- ▶ Provides entity to deal with third parties
- ▶ Incorporate by filing required documents at the Office of the Secretary of State



Association Powers

unless otherwise provided in the governing documents, an association may:

- ▶ Adopt bylaws
- ▶ Adopt rules and regulations
- ▶ Adopt budgets and collect assessments
- ▶ Contract with managing agents and other independent contractors
- ▶ Institute and defend litigation, except between owners in disputes that are not the responsibility of the association



More Association Powers

- ▶ Enter into contracts and incur liabilities
- ▶ Regulate use, maintenance, repair, replacement and modification of common areas
- ▶ Improve common areas
- ▶ Acquire, mortgage and sell property
- ▶ Grant easements, etc. over common areas
- ▶ Charge fees for use of common areas
- ▶ Impose late charges on delinquent assessments

And Even More Association Powers

- ▶ Impose late charges and reasonable fines, as provided in bylaws or rules and regulations
- ▶ Other powers conferred by the bylaws
- ▶ All powers of same type of corporation
- ▶ Other powers necessary and proper for governance of the association

Caution – the exercise of these powers must be within the authority or purpose of the association as provided in the governing documents.

Board of Directors



- ▶ Acts on behalf of the association
- ▶ Standards for duty of care and loyalty as provided in RCW 24.03.127
- ▶ Has obligation of good faith, in best interests of association
- ▶ May rely on professional counsel
- ▶ May be removed at any meeting at which a quorum is present by majority of members present

Budget Ratification by Members



- ▶ **Procedure set out in RCW 64.38.025(3).**
Summary is mailed to owners within 30 days of adoption, at least two (2) weeks and up to two (2) months before budget ratification meeting.
- ▶ **Budget adopted by the board** is deemed approved by the owners *unless* it is rejected at the meeting by majority of members (or larger percentage as may be provided in governing documents) whether or not quorum is present

Flags and political signs



- ▶ Displays of US flag on property of owner or resident may not be prohibited *as long as* display is in accordance with US law and regulations
- ▶ Same for political signs, subject to *reasonable* regulation regarding placement and manner of display



Solar Panels



- ▶ **May not prohibit** installation of solar panels on property of owner or resident if they meet certain health, safety and certification requirements, subject to aesthetic provisions in governing documents



...in Washington???

Adult Homes



- ▶ **May not prohibit** the operation of a licensed adult home or persons with disabilities from living in a licensed adult home.

Reserve Accounts



- ▶ Homeowners Association Act "*encourages*" associations to maintain reserve accounts to fund major repairs, maintenance and replacement of common areas.
- ▶ Funds may be withdrawn from reserve account to meet unexpected but withdrawal must be noted in minute book and notification must be delivered or mailed to every owner
and
- ▶ Association must adopt repayment schedule.

Reserve Study



- ▶ Every association required to prepare and update a reserve study – *unless to do so would be a hardship*.
- ▶ Owners holding at least 35% of the vote may petition board to have a reserve study done. If board refuses, owners may go to court.
- ▶ Failure to have reserve study done does not negate owners' obligation to pay assessments.

Association Meetings



- ▶ Must hold meeting at least once a year
- ▶ Special member meetings may be called by board president, majority of the board or owners with 10% of the vote
- ▶ Open to members and their agents. Minutes must be kept
- ▶ Board may go to closed (executive) session for certain specific items
- ▶ Action taken in executive session must be ratified in open session
- ▶ Quorum for member meetings is 34% unless specified otherwise in governing documents

Association Financials



- ▶ Association or managing agent shall keep financial records in sufficient detail. Records are property of the association not the manager
- ▶ Records shall be made available to owners and their agents upon reasonable notice
- ▶ Annual financial statements are required
- ▶ Funds shall be kept in accounts in name of association



Violations



- ▶ Any aggrieved party may sue for damages or an injunction. The court may, in an appropriate case, awards reasonable attorneys' fees to the prevailing party
- ▶ Consider alternative dispute resolution
See www.resolutionwa.org/centers.html

Construction Defects



- ▶ RCW 64.50 establishes procedures that must be followed *before* associations or homeowners may file a lawsuit.
- ▶ Builder or developer must be given notice and the opportunity to inspect as well as timelines for offers to cure or settle.

Construction of Covenants

- ▶ Plats and CCRs are recorded by property owner to bind all further owners of property or portion thereof
- ▶ Interpreted to determine intent of drafter
- ▶ Outside evidence admitted only if language ambiguous
- ▶ Recently courts have placed special emphasis on interpretations to protect collective homeowner interests



Architectural Controls

- ▶ Some very specific and detailed, others very general
- ▶ Need to act formally
- ▶ Take action promptly
- ▶ Understand and enforce even-handedly, treating all owners the same
- ▶ Maintain records to demonstrate that procedures have been followed and reasonable decisions made



Questions & Comments

Gary Ackerman received his undergraduate and legal degrees from the University of Michigan (AB 1967, JD 1970). He is a member of Foster Pepper PLLC, in their Seattle office. Mr. Ackerman concentrates his practice on condominium and community association law, representing both developers and associations of condominiums, residential communities and mixed-use projects. He chaired the Washington Condominium Act Legislative Task Force, which drafted the Washington Condominium Act and is currently on the drafting committee for adoption of the Uniform Common Interest Ownership Act (UCIOA) in our state. He is a frequent speaker on matters involving common interest communities.