

# Title 64

## REAL PROPERTY AND CONVEYANCES

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### Chapter 64.04 RCW CONVEYANCES

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**Reviser's note:** The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

**Validating—Code 1881:** "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

**Validating—Code 1881:** "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

*Recording of deeds and conveyances: Title 65 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition.** (1) A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

(2) For purposes of this section:

(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a

breach of the agreement by the other and identified in the agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute. [2005 c 186 § 1; 1991 c 210 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.007 Owner-occupied real property—Release of security interest—Outstanding debt—Notice to borrower—Definition.** (1) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to release its deed of trust or mortgage in the real property for less than full payment of the secured debt, it shall provide upon its first written notice to the borrower the following information in substantially the following form:

"To: [Name of borrower]                      DATE:

Please take note that [name of beneficiary or mortgagee, or its assignees], in releasing its security interest in this owner-occupied real property, [waives or reserves] the right to collect that amount that constitutes full payment of the secured debt. The amount of debt outstanding as of the date of this letter is \$. . . . . However, nothing in this letter precludes the borrower from negotiating with the [name of beneficiary or mortgagee, or its assignees] for a full release of this outstanding debt.

If [name of beneficiary or mortgagee, or its assignees] does not initiate a court action to collect the outstanding debt within three years on the date which it released its security interest, the right to collect the outstanding debt is forfeited."

(2) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to pursue collection of the outstanding debt, it must initiate a court action to collect the remaining debt within three years from the date on which it released its deed of trust or mortgage in the owner-occupied real property or else it forfeits any right to collect the remaining debt.

(3) This section applies only to debts incurred by individuals primarily for personal, family, or household purposes. This section does not apply to debts for business, commercial, or agricultural purposes.

(4) For the purposes of this section, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower. [2012 c 185 § 1.]

**64.04.010 Conveyances and encumbrances to be by deed.** Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate

under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

**64.04.020 Requisites of a deed.** Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by \*this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

\*Reviser's note: The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

**64.04.030 Warranty deed—Form and effect.** Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . . . Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he or she was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he or she warrants to the grantee, his or her heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his or her heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [2016 c 202 § 37; 2012 c 117 § 186; 1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

**64.04.040 Bargain and sale deed—Form and effect.** Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells, and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . . .

(2016 Ed.)

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his or her heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his or her heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his or her heirs and assigns, unless limited by express words contained in such deed; and the grantee, his or her heirs, executors, administrators, and assigns may recover in any action for breaches as if such covenants were expressly inserted. [2016 c 202 § 38; 2012 c 117 § 187; 1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

**64.04.050 Quitclaim deed—Form and effect.** Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . . . Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his or her heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [2016 c 202 § 39; 2012 c 117 § 188; 1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

**64.04.055 Deeds for conveyance of apartments under horizontal property regimes act.** All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

**64.04.060 Word "heirs" unnecessary.** The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

**64.04.070 After acquired title follows deed.** Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his or her and their heirs and assigns forever. And the title to such

land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or her or their heirs and assigns, and shall thereafter run with such land. [2012 c 117 § 189; 1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

**64.04.090 Private seals abolished.** The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

**64.04.100 Private seals abolished—Validation.** All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

**64.04.105 Corporate seals—Effect of absence from instrument.** The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

**64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances—Definitions.** A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, federally recognized Indian tribe, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest constitutes and is classified as real property. All instruments for the conveyance thereof must be substantially in the form required by law for the conveyance of any land or other real property.

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

(1) "Nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts.

(2) "Nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat. [2013 c 120 § 1; 1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

*Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.*

*Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.*

**64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception.** The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

**64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized.** The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.150 Solar easements—Definitions.** (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.160 Solar easements—Creation.** A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.170 Interference with solar easement—Remedies.** In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2016 Ed.)

**64.04.175 Easements established by dedication—Extinguishing or altering.** Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

**64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest.** Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

**64.04.190 Public utility and transportation corridors—Defined.** Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

**64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose.** Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation. [1993 c 245 § 3.]

**Findings—Intent—1993 c 245:** See note following RCW 80.28.065.

**64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services.** (1) If the department of social and health services has filed a request for notice of transfer or encumbrance under RCW 43.20B.750:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form

for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under RCW 43.20B.750, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section. [2005 c 292 § 2.]

**64.04.220 Handling of earnest money—Definitions—Notice from holder—Interpleader action, forms—Application.**

(1) As used in this section:

(a) "Day" means calendar day.

(b) "Earnest money" means money placed with a holder by a prospective buyer of residential real property to show a good-faith intention to perform pursuant to an executed purchase and sale agreement.

(c) "Holder" means the party holding the earnest money pursuant to an executed purchase and sale agreement including, but not limited to, any of the following:

(i) A real estate firm, as defined in RCW 18.85.011;

(ii) An escrow agent, as defined in RCW 18.44.011;

(iii) A title insurance company issued a certificate of authority pursuant to chapters 48.05 and 48.29 RCW; or

(iv) A title insurance agent licensed pursuant to chapter 48.29 RCW.

(d) "Party" means a person or entity identified as a buyer or seller in an executed purchase and sale agreement for residential real property.

(e) "Residential real property" has the same meaning as defined in RCW 64.06.005.

(2) If a holder receives a written demand from a party to a transaction for all or any part of the earnest money held by the holder in relation to that transaction, the holder must, within fifteen days of receipt of the written demand: (a) Notify all other parties to the transaction of the demand in writing and comply with the other requirements of this section; (b) release the earnest money to one or more of the parties; or (c) commence an interpleader action.

(3) The holder's notice to the other parties must include a copy of the demand and advise the other parties that: (a) They have twenty days from the date of the holder's notice to notify the holder in writing of their objection to the release of the earnest money; and (b) their failure to deliver a timely written objection will result in the holder releasing the earnest money to the demanding party in accordance with the demand upon expiration of the twenty-day period. The holder's notice must also specify an address where written objections to the release of the earnest money must be sent.

(4) The twenty-day period commences upon the date the holder places the holder's notice in the United States postal service mail and sends an email pursuant to subsection (6) of this section. The holder must maintain a log or other method of evidencing the mailing of the holder's notice.

(5) If the holder does not receive, at the address specified in the holder's notice, a written objection from one or more of the other parties within the twenty-day period, the holder must, within ten days of the expiration of the twenty-day period, deliver the earnest money to the demanding party in accordance with the party's written demand. If the holder

receives, at the specified address, a written objection or inconsistent demand from another party to the transaction within the twenty-day period, the holder must not release the funds to any party, but must commence an interpleader action within sixty days of receipt of the objection or inconsistent demand, unless the parties provide subsequent consistent instructions that authorize the holder to (a) disburse the earnest money or (b) refrain from commencing an interpleader action for a specified period of time.

(6) The notice from the holder to the other parties must be sent via United States postal service mail and via email using the last known mailing address and email address for such parties to the extent such information is provided by the parties and is contained in the holder's records for that transaction. The holder has no obligation to search outside its records to determine the current mailing or email address of the other parties, and is not liable for unsuccessfully locating the other parties' current mailing or email addresses if outside records are used.

(7) Unless a holder releases the earnest money pursuant to subsection (2)(b) of this section, a holder that complies with this section is not liable to any party to the transaction, or to any other person, for releasing the earnest money to the demanding party.

(8) This section does not prohibit a holder from interpleading the earnest money at any time, including after receiving a written demand as described in subsection (2) of this section and before the expiration of the twenty-day period as described in subsections (3) and (4) of this section.

(9) If the holder commences an interpleader action, the court must award the holder its reasonable attorneys' fees and costs.

(10) The holder may use the following form of summons for the interpleader action:

SUPERIOR COURT OF WASHINGTON  
FOR . . . . . COUNTY

<p>..... , Interpleader Plaintiff,</p> <p>vs.</p> <p>..... , Defendant Seller,</p> <p>and</p> <p>..... , Defendant Buyer.</p>	}	<p>NO. INTERPLEADER SUMMONS</p>
---	---	---

TO: THE DEFENDANTS

This interpleader lawsuit has been started against you in the above court. The plaintiff's claim is stated in the complaint.

In order to protect any right you have in the money described in the complaint, you must file a response to the complaint and serve a copy of your response on the other defendant within twenty (20) days after the service of this summons, if served within the state of Washington [or within sixty (60) days after service if served outside the state of Washington], excluding the day of service. The day of service is the day that this summons is personally served or post-marked, if served by mail. If you do not respond to the complaint within this time period, the other defendant may enter

a default judgment against you, without notice and you would lose any interest you may have in the money described in the complaint. If you serve a "Notice of Appearance" on the other defendant, you are entitled to notice before such a default judgment is entered.

The plaintiff has waived all claims to the money deposited with the court, except for reimbursement of its reasonable attorneys' fees and costs.

You may wish to seek the advice of an attorney. In such case, you should do so promptly so that your response, if any, can be served within the applicable time.

This summons is issued pursuant to Rule 4 of the superior court civil rules of the state of Washington.

Interpleader Plaintiff

By:
Dated:
Address:

(11) The holder may use the following form of complaint for the interpleader action:

SUPERIOR COURT OF WASHINGTON
FOR . . . . COUNTY

Interpleader Plaintiff,
vs.
Defendant Seller,
and
Defendant Buyer.

NO.
INTERPLEADER
COMPLAINT

COMES NOW the interpleader plaintiff, and alleges as follows:

- 1. INTERPLEADER. Plaintiff is holding earnest money related to the attached real estate purchase and sale agreement (the "agreement").
2. DEFENDANTS' AGREEMENT. Defendants are the "buyer" and "seller" under the agreement.
3. EARNEST MONEY - CONFLICTING CLAIMS. Pursuant to the agreement, buyer deposited the earnest money with plaintiff in the amount of \$. . . . The sale contemplated by the agreement did not close. Both buyer and seller have made conflicting claims for the earnest money.
4. DEPOSIT WITH COURT. At the time of filing of this complaint, plaintiff has deposited the earnest money with the clerk of the court pursuant to RCW 4.08.170 and superior court civil rule 22.
5. PLAINTIFF'S CLAIM. Plaintiff disclaims any interest in the earnest money, except for reimbursement of its reasonable attorneys' fees and costs. Pursuant to RCW 4.08.170, plaintiff asks that this complaint be accepted without payment of a filing fee or other cost to plaintiff.
6. The defendants' names and addresses last known to plaintiff are:

Defendant Buyer:
Address:
Defendant Seller:
Address:

(2016 Ed.)

WHEREFORE, Plaintiff having interplead the earnest money, respectfully requests:

- 1. That the court adjudicate who is entitled to the earnest money.
2. That the court award plaintiff its reasonable attorneys' fees and costs.

Interpleader Plaintiff

By:
Dated:
Address:

(12) This section:

- (a) Applies to all earnest money held by a holder on July 24, 2015, even if the earnest money was deposited with the holder before July 24, 2015;
(b) Applies only to a transaction involving improved residential real property and unimproved residential real property as each are defined in RCW 64.06.005. [2015 c 51 § 1.]

Chapter 64.06 RCW
REAL PROPERTY TRANSFERS—SELLERS'
DISCLOSURES

Sections

- 64.06.005 Definitions.
64.06.010 Application—Exceptions for certain transfers of real property.
64.06.013 Commercial real estate—Seller's duty—Format of disclosure statement—Minimum information.
64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.021 Notice regarding sex offenders.
64.06.022 Disclosure of possible proximity to farm.
64.06.030 Delivery of disclosure statement—Buyer's options—Time frame.
64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction.
64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.
64.06.060 Consumer protection act does not apply.
64.06.070 Buyer's rights or remedies.
64.06.080 Seller and landlord disclosure requirement—Electronic notice by city or county.
64.06.900 Effective date—1994 c 200.

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

- (1) "Commercial real estate" has the same meaning as in RCW 60.42.005.
(2) "Improved residential real property" means:
(a) Real property consisting of, or improved by, one to four residential dwelling units;
(b) A residential condominium as defined in \*RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;
(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or
(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.
(3) "Residential real property" means both improved and unimproved residential real property.

(4) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

(5) "Unimproved residential real property" means property zoned for residential use that is not improved by one or more residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. It does not include commercial real estate or property defined as "timberland" under RCW 84.34.020. [2010 c 64 § 1; 2009 c 505 § 1; 2007 c 107 § 2; 2002 c 268 § 8; 1994 c 200 § 1.]

\*Reviser's note: RCW 64.34.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (9) to subsection (10), effective January 1, 2012.

**Application—2009 c 505:** "This act applies prospectively and not retroactively. It applies only to sales of property that arise on or after July 26, 2009." [2009 c 505 § 5.]

**Findings—Intent—2007 c 107:** See note following RCW 64.06.015.

**Purpose—Finding—Effective dates—2002 c 268:** See notes following RCW 43.22.434.

**64.06.010 Application—Exceptions for certain transfers of real property.** This chapter does not apply to the following transfers of real property:

- (1) A foreclosure or deed-in-lieu of foreclosure;
- (2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;
- (3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;
- (4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- (5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;
- (6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and
- (7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement. [2010 c 64 § 2; 2008 c 6 § 632; 2007 c 107 § 3; 1994 c 200 § 2.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Findings—Intent—2007 c 107:** See note following RCW 64.06.015.

**64.06.013 Commercial real estate—Seller's duty—Format of disclosure statement—Minimum information.**

(1) In a transaction for the sale of commercial real estate, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.



I. SELLER'S DISCLOSURES:

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

- Foundations
Doors
Ceilings
Sidewalks
Other
Interior Walls
Windows

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

1. TITLE AND LEGAL

A. Do you have legal authority to sell the property? If no, please explain.

\*B. Is title to the property subject to any of the following?

- (1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?

\*C. Are there any encroachments, boundary agreements, or boundary disputes?

\*D. Is there any leased parking?

\*E. Is there a private road or easement agreement for access to the property?

\*F. Are there any rights-of-way, easements, shared use agreements, or access limitations?

\*G. Are there any written agreements for joint maintenance of an easement or right-of-way?

\*H. Are there any zoning violations or nonconforming uses?

\*I. Is there a survey for the property?

\*J. Are there any legal actions pending or threatened that affect the property?

\*K. Is the property in compliance with the Americans with Disabilities Act?

2. WATER

\*Are there any water rights for the property, such as a water right permit, certificate, or claim?

3. SEWER/ON-SITE SEWAGE SYSTEM

\*Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

4. STRUCTURAL

\*A. Has the roof leaked within the last five years?

\*B. Has any occupied subsurface flooded or leaked within the last five years?

\*C. Have there been any conversions, additions, or remodeling?

(1) If yes, were all building permits obtained?

(2) If yes, were all final inspections obtained?

\*D. Has there been any settling, slippage, or sliding of the property or its improvements?

\*E. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Slab Floors
Outbuildings
Exterior Walls
Siding

5. SYSTEMS AND FIXTURES

\* Are there any defects in the following systems? If yes, please explain.

- (1) Electrical system
(2) Plumbing system
(3) Heating and cooling systems
(4) Fire and security system
(5) Carbon monoxide alarms

6. ENVIRONMENTAL

\*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

\*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

\*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

[ ] Yes [ ] No [ ] Don't know

DATE . . . . . SELLER . . . . . SELLER . . . . .

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . .

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agree-

ment between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2012 c 132 § 3; 2010 c 64 § 3.]

Findings—2012 c 132: See note following RCW 64.06.020.

Application—2012 c 132 §§ 2 and 3: See note following RCW 64.06.020.

64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT. . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

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FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE
A. Do you have legal authority to sell the property? If no, please explain.
\*B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?
\*C. Are there any encroachments, boundary agreements, or boundary disputes?
\*D. Is there a private road or easement agreement for access to the property?
\*E. Are there any rights-of-way, easements, or access limitations that affect the Buyer's use of the property?
\*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
\*G. Is there any study, survey project, or notice that would adversely affect the property?
\*H. Are there any pending or existing assessments against the property?
\*I. Are there any zoning violations, non-conforming uses, or any unusual restrictions on the property that affect future construction or remodeling?
\*J. Is there a boundary survey for the property?
\*K. Are there any covenants, conditions, or restrictions recorded against title to the property?
2. WATER
A. Household Water
(1) Does the property have potable water supply?
(2) If yes, the source of water for the property is:
[] Private or publicly owned water system
[] Private well serving only the property
\*[] Other water system
\*If shared, are there any written agreements?
\*(3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
\*(4) Are there any problems or repairs needed?
(5) Is there a connection or hook-up charge payable before the property can be connected to the water main?
(6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>6. SOIL STABILITY</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*A. Are there any settlement, earth movement, slides, or similar soil problems on the property?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (b) If yes, has all or any portion of the water right not been used for five or more successive years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	..... <b>7. ENVIRONMENTAL</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*B. Does any part of the property contain fill dirt, waste, or other fill material?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Irrigation Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) If yes, has all or any portion of the water right not been used for five or more successive years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*F. Has the property been used for commercial or industrial purposes?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*G. Is there any soil or groundwater contamination?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	..... C. Outdoor Sprinkler System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) Is there an outdoor sprinkler system for the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*I. Has the property been used as a legal or illegal dumping site?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (2) If yes, are there any defects in the system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*J. Has the property been used as an illegal drug manufacturing site?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (3) If yes, is the sprinkler system connected to irrigation water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*K. Are there any radio towers that cause interference with cellular telephone reception?
			<b>3. SEWER/SEPTIC SYSTEM</b>				<b>8. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS</b>
			A. The property is served by:				A. Is there a homeowners' association?
			<input type="checkbox"/> Public sewer system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:
			<input type="checkbox"/> On-site sewage system (including pipes, tanks, drainfields, and all other component parts)				.....
			<input type="checkbox"/> Other disposal system, please describe: .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Are there regular periodic assessments: \$ . . . per <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Other .....
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*C. Are there any pending special assessments?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. If the property is connected to an on-site sewage system:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (1) Was a permit issued for its construction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>9. OTHER FACTS</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (2) Was it approved by the local health department or district following its construction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) Is the septic system a pressurized system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) Is the septic system a gravity system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*B. Does the property have any plants or wildlife that are designated as species of concern, or listed as threatened or endangered by the government?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (5) Have there been any changes or repairs to the on-site sewage system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*C. Is the property classified or designated as forestland or open space?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain: .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	* (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Do you have a forest management plan? If yes, attach.
			<b>4. ELECTRICAL/GAS</b>				*E. Have any development-related permit applications been submitted to any government agencies?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Is the property served by natural gas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B. Is there a connection charge for gas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If the answer to E is "yes," what is the status or outcome of those applications? .....
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	C. Is the property served by electricity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Is there a connection charge for electricity?				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*E. Are there any electrical problems on the property? .....				
			<b>5. FLOODING</b>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A. Is the property located in a government designated flood zone or floodplain?				

[ ] Yes [ ] No [ ] Don't know F. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?

10. FULL DISCLOSURE BY SELLERS

[ ] Yes [ ] No [ ] Don't know A. Other conditions or defects: \*Are there any other existing material defects affecting the property that a prospective buyer should know about? B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation. B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party. C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information. D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller. E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . .

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of

any kind by the seller or any real estate licensee involved in the transaction. [2011 c 200 § 3. Prior: 2009 c 505 § 2; 2009 c 130 § 1; 2007 c 107 § 5.]

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: "(1) The legislature finds that:

(a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;

(b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and

(c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.

(2) The legislature intends that:

(a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;

(b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and

(c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT. . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF

RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE
A. Do you have legal authority to sell the property? If no, please explain.
\*B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?
\*C. Are there any encroachments, boundary agreements, or boundary disputes?
\*D. Is there a private road or easement agreement for access to the property?
\*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?
\*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
\*G. Is there any study, survey project, or notice that would adversely affect the property?
\*H. Are there any pending or existing assessments against the property?
\*I. Are there any zoning violations, non-conforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
\*J. Is there a boundary survey for the property?
\*K. Are there any covenants, conditions, or restrictions recorded against the property?
2. WATER
A. Household Water

- (1) The source of water for the property is:
[] Private or publicly owned water system
[] Private well serving only the subject property . . . . .
\*[] Other water system
\*If shared, are there any written agreements?
\*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
\*(3) Are there any problems or repairs needed?
(4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
\*(5) Are there any water treatment systems for the property? If yes, are they [] Leased [] Owned
\*(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
\*(b) If yes, has all or any portion of the water right not been used for five or more successive years?
\*(7) Are there any defects in the operation of the water system (e.g. pipes, tank, pump, etc.)?
B. Irrigation Water
(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?
\*(a) If yes, has all or any portion of the water right not been used for five or more successive years?
\*(b) If so, is the certificate available? (If yes, please attach a copy.)
\*(c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed?
\*(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:
C. Outdoor Sprinkler System
(1) Is there an outdoor sprinkler system for the property?
\*(2) If yes, are there any defects in the system?
\*(3) If yes, is the sprinkler system connected to irrigation water?
3. SEWER/ON-SITE SEWAGE SYSTEM
A. The property is served by:
[] Public sewer system,
[] On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
[] Other disposal system, please describe:
B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.
\*C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
D. If the property is connected to an on-site sewage system:
\*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
(2) When was it last pumped?
. . . . .

[ ] Yes [ ] No [ ] Don't know
\* (3) Are there any defects in the operation of the on-site sewage system?
[ ] Don't know
(4) When was it last inspected?
By whom:
[ ] Don't know
(5) For how many bedrooms was the on-site sewage system approved?
[ ] Yes [ ] No [ ] Don't know
E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system?
\*F. Have there been any changes or repairs to the on-site sewage system?
\*G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property?
\*H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[ ] Yes [ ] No [ ] Don't know
\*A. Has the roof leaked within the last five years?
\*B. Has the basement flooded or leaked?
\*C. Have there been any conversions, additions, or remodeling?
\* (1) If yes, were all building permits obtained?
\* (2) If yes, were all final inspections obtained?
D. Do you know the age of the house?
\*E. Has there been any settling, slippage, or sliding of the property or its improvements?
\*F. Are there any defects with the following: (If yes, please check applicable items and explain.)
Foundations, Chimneys, Doors, Ceilings, Pools, Sidewalks, Garage Floors, Other, Incline Elevators, Decks, Interior Walls, Windows, Slab Floors, Hot Tub, Outbuildings, Walkways, Woodstoves, Stairway Chair Lifts, Exterior Walls, Fire Alarm, Patio, Driveways, Sauna, Fireplaces, Siding, Elevators, Wheelchair Lifts

\*G. Was a structural pest or "whole house" inspection done?
\*H. During your ownership, has the property had any wood destroying organism or pest infestation?
I. Is the attic insulated?
J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

\*A. If any of the following systems or fixtures are included with the transfer, are there any defects?
Electrical system, Plumbing system, Hot water tank, Garbage disposal, Appliances, Sump pump, Heating and cooling systems, Security system, Owned/Leased, Other
\*B. If any of the following fixtures or property is included with the transfer, are they leased?

Security system, Tanks (type), Satellite dish, Other
\*C. Are any of the following kinds of wood burning appliances present at the property?
(1) Woodstove, (2) Fireplace insert, (3) Pellet stove, (4) Fireplace
If yes, are all of the (1) woodstoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?
D. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?
E. Is the property equipped with carbon monoxide alarms?
F. Is the property equipped with smoke alarms?

6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

A. Is there a Homeowners' Association?
Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, firing policy, and other information that is not publicly available:
B. Are there regular periodic assessments?
\$ . . . per [ ] Month [ ] Year
[ ] Other
\*C. Are there any pending special assessments?
\*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

\*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?
\*B. Does any part of the property contain fill dirt, waste, or other fill material?
\*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
\*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
\*F. Has the property been used for commercial or industrial purposes?
\*G. Is there any soil or groundwater contamination?
\*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?
\*I. Has the property been used as a legal or illegal dumping site?
\*J. Has the property been used as an illegal drug manufacturing site?
\*K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

[ ] Yes [ ] No [ ] Don't know

\*A. Did you make any alterations to the home? If yes, please describe the alterations: . . . . .

[ ] Yes [ ] No [ ] Don't know

\*B. Did any previous owner make any alterations to the home?

[ ] Yes [ ] No [ ] Don't know

\*C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

[ ] Yes [ ] No [ ] Don't know

\*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . .

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2015 c 110 § 1; 2012 c 132 § 2; 2011 c 200 § 4. Prior: 2009 c 505 § 3; 2009 c 130 § 2; 2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Application—2015 c 110 § 1: "Section 1 of this act applies only to real estate transactions for which a purchase and sale agreement is entered into after July 24, 2015." [2015 c 110 § 2.]

Findings—2012 c 132: "The legislature finds that the state building code council has adopted rules relating to laws on installation of carbon monoxide alarms in homes and buildings. The legislature finds that amending the state's real estate seller disclosure forms and ensuring that the responsibility for carbon monoxide alarms is that of the seller, will aid in implementing this law." [2012 c 132 § 1.]

Application—2012 c 132 §§ 2 and 3: "Sections 2 and 3 of this act only apply to real estate transactions for which a purchase and sale agreement is entered into after June 7, 2012." [2012 c 132 § 5.]

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Additional notes found at www.leg.wa.gov

64.06.021 Notice regarding sex offenders. The notice regarding sex offenders under RCW 64.06.020 does not create any legal duty on the part of the seller, or on the part of any real estate licensee, to investigate or to provide the buyer with information regarding the actual presence, or lack thereof, of registered sex offenders in the area of any property, including but not limited to any property that is the subject of a disclosure or waiver of disclosure under this chapter, or that is exempt from disclosure under RCW 64.06.010. [2004 c 114 § 2.]

Additional notes found at www.leg.wa.gov

64.06.022 Disclosure of possible proximity to farm.

A seller of residential real property shall make available to the buyer the following statement: "This notice is to inform you that the real property you are considering for purchase may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act." [2010 c 64 § 4; 2006 c 77 § 1; 2005 c 511 § 3.]

64.06.030 Delivery of disclosure statement—Buyer's options—Time frame.

Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of

the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer. [1996 c 301 § 3; 1994 c 200 § 4.]

**64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction.** (1) If, after the date that a seller of real property completes a real property transfer disclosure statement, the seller learns from a source other than the buyer or others acting on the buyer's behalf such as an inspector of additional information or an adverse change which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of

the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

(4) Failure of a homeowners' association or its officers, directors, employees, or authorized agents to provide requested information in part 8 of the disclosure statement form in RCW 64.06.015 or part 6 of the disclosure statement form in RCW 64.06.020 does not constitute a seller's failure or refusal to provide a real property transfer disclosure statement under subsection (3) of this section. [2010 c 64 § 5. Prior: 2009 c 505 § 4; 2009 c 130 § 3; 1996 c 301 § 4; 1994 c 200 § 5.]

**Application—2009 c 505:** See note following RCW 64.06.005.

**64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.** (1) The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any real estate licensee involved in a real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or omission. Unless the licensee has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the licensee shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor. [2010 c 64 § 6; 1996 c 301 § 5; 1994 c 200 § 6.]

**64.06.060 Consumer protection act does not apply.** The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1994 c 200 § 7.]

**64.06.070 Buyer's rights or remedies.** Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller or



erwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter. [2010 c 64 § 7; 1996 c 301 § 6; 1994 c 200 § 8.]

**64.06.080 Seller and landlord disclosure requirement—Electronic notice by city or county.** (1) Any ordinance, resolution, or policy adopted by a city or county that imposes a requirement on landlords or sellers of real property, or their agents, to provide information to a buyer or tenant pertaining to the subject property or the surrounding area is effective only after:

(a) A summary of the ordinance, resolution, or policy is posted electronically in accordance with RCW 43.110.030(2)(e); and

(b) An internet link to the ordinance, resolution, or policy, or the relevant portion of the actual language of the ordinance, resolution, or policy, is posted electronically in accordance with RCW 43.110.030(2)(e).

(2) If, prior to June 9, 2016, a city or county adopted an ordinance, resolution, or policy that imposes a requirement on landlords or sellers of real property, or their agents, to provide information to a buyer or tenant pertaining to the subject property or the surrounding area, the city or county must cause, within ninety days of June 9, 2016:

(a) A summary of the ordinance, resolution, or policy to be posted electronically in accordance with RCW 43.110.030(2)(e); and

(b) An internet link to the ordinance, resolution, or policy, or the relevant portion of the actual language of the ordinance, resolution, or policy, to be posted electronically in accordance with RCW 43.110.030(2)(e). If the requirement is not electronically posted as required by this subsection, the requirement must thereafter cease to be in effect. [2016 c 138 § 1; 2015 2nd sp.s. c 10 § 4.]

**64.06.900 Effective date—1994 c 200.** This act shall take effect on January 1, 1995. [1994 c 200 § 10.]

## Chapter 64.08 RCW ACKNOWLEDGMENTS

### Sections

64.08.010	Who may take acknowledgments.
64.08.020	Acknowledgments out of state—Certificate.
64.08.040	Foreign acknowledgments, who may take.
64.08.050	Certificate of acknowledgment—Evidence.
64.08.060	Form of certificate for individual.
64.08.070	Form of certificate for corporation.
64.08.090	Authority of superintendents, business managers, and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
64.08.100	Acknowledgments by persons unable to sign name.

**Validating:** See notes following chapter 64.04 RCW digest.

### Acknowledgments

*merchant seamen:* RCW 73.20.010.

*persons in the armed services:* RCW 73.20.010.

*persons outside United States in connection with war:* RCW 73.20.010.

### 64.08.010 Who may take acknowledgments.

Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk

(2016 Ed.)

thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

**64.08.020 Acknowledgments out of state—Certificate.** Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district, or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district, or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district, or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he or she represented himself or herself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [2012 c 117 § 190; 1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

### 64.08.040 Foreign acknowledgments, who may take.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

### 64.08.050 Certificate of acknowledgment—Evidence.

The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate writ-

ten upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

**64.08.060 Form of certificate for individual.** A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ..... }  
County of ..... } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this . . . . day of . . . . ., (year) . . . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at . . . . ., (giving place of residence). [2016 c 202 § 40; 1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

**64.08.070 Form of certificate for corporation.** A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ..... }  
County of ..... } ss.

On this . . . . day of . . . . ., (year) . . . . , before me personally appeared . . . . ., to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that exe-

cuted the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [2016 c 202 § 41; 2012 c 117 § 191; 1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

**64.08.090 Authority of superintendents, business managers, and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.** The superintendents, associate and assistant superintendents, business managers, records officers, and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees, and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his or her name, state in writing his or her place of residence, the date of his or her action, and affix the seal of the institution where he or she is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [2012 c 117 § 192; 1972 ex.s. c 58 § 1.]

**64.08.100 Acknowledgments by persons unable to sign name.** Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

**Chapter 64.12 RCW  
WASTE AND TRESPASS**

Sections

- 64.12.010 Waste actionable.
- 64.12.020 Waste by guardian or tenant, action for.
- 64.12.030 Injury to or removing trees, etc.—Damages.
- 64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions.

- 64.12.040 Mitigating circumstances—Damages.  
 64.12.050 Injunction to prevent waste on public land.  
 64.12.060 Action by occupant of unsurveyed land.

*Actions to be commenced where subject is situated: RCW 4.12.010.*

*Damages for waste after injunction issued: RCW 7.40.200.*

*Injunctions, generally: Chapter 7.40 RCW.*

*Trespass*

*animals: Title 16 RCW.*

*criminal: Chapter 9A.52 RCW.*

*public lands: Chapter 79.02 RCW.*

*theft: Chapter 9A.56 RCW.*

*waste, executor or administrator may sue: RCW 11.48.010.*

*Waste*

*option contracts and coal leases on state lands: RCW 79.14.580.*

*restraining during redemption period: RCW 6.23.100.*

*trespass on state lands: Chapter 79.02 RCW.*

**64.12.010 Waste actionable.** Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

**64.12.020 Waste by guardian or tenant, action for.** If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

**64.12.030 Injury to or removing trees, etc.—Damages.** Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, including a Christmas tree as defined in \*RCW 76.48.020, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, in an action by the person, city, or town against the person committing the trespasses or any of them, any judgment for the plaintiff shall be for treble the amount of damages claimed or assessed. [2009 c 349 § 4; Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

\*Reviser's note: RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

*Trespass, public lands: Chapter 79.02 RCW.*

**64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions.** (1) An electric utility is immune from liability under RCW 64.12.030, 64.12.040, and

4.24.630 and any claims for general or special damages, including claims of emotional distress, for cutting or removing vegetation located on or originating from land or property adjacent to electric facilities that:

(a) Has come in contact with or caused damage to electric facilities;

(b) Poses an imminent hazard to the general public health, safety, or welfare and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner present on the property to trim or remove such hazard. For purposes of this subsection (1)(b), notice may be provided by posting a notice or flier in a conspicuous location on the affected property that gives a good faith estimate of the time frame in which the electric utility's trimming or removal work must occur, specifies how the electric utility may be contacted, and explains the responsibility of the resident or property owner to respond pursuant to the requirements of the notice. An electric utility may act without agreement if the resident or property owner fails to respond pursuant to the requirements of the notice. No notice or agreement is necessary if the electric utility's action is necessary to protect life, property, or restore electric service; or

(c) Poses a potential threat to damage electric facilities and the electric utility attempts written notice by mail to the last known address of record indicating the intent to act or remove vegetation and secures agreement from the affected property owner of record for the cutting, removing, and disposition of the vegetation. Such notice shall include a brief statement of the need and nature of the work intended that will impact the owner's property or vegetation, a good faith estimate of the time frame in which such work will occur, and how the utility can be contacted regarding the cutting or removal of vegetation. If the affected property owner fails to respond to a notice from the electric utility within two weeks of the date the electric utility provided notice, the electric utility may secure agreement from a resident of the affected property for the cutting, removing, and disposition of vegetation.

(2)(a) A hazard to the general public health, safety, or welfare is deemed to exist when:

(i) Vegetation has encroached upon electric facilities by overhanging or growing in such close proximity to overhead electric facilities that it constitutes an electrical hazard under applicable electrical construction codes or state and federal health and safety regulations governing persons who are employed or retained by, or on behalf of, an electric utility to construct, maintain, inspect, and repair electric facilities or to trim or remove vegetation; or

(ii) Vegetation is visibly diseased, dead, or dying and has been determined by a qualified forester or certified arborist employed or retained by, or on behalf of, an electric utility to be of such proximity to electric facilities that trimming or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities.

(b) The factors to be considered in determining the extent of trimming required to remove a hazard to the general public health, safety, or welfare may include normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures.

(3) A potential threat to damage electric facilities exists when vegetation is of such size, condition, and proximity to electric facilities that it can be reasonably expected to cause damage to electric facilities and, based upon this standard, the vegetation has been determined to pose a potential threat by a qualified forester or certified arborist employed or retained by or on behalf of an electric utility.

(4) For the purposes of this section:

(a) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, cross-arms, receivers, transmitters, transformers, instruments, machines, appliances, instrumentalities, and all devices and apparatus used, operated, owned, or controlled by an electric utility, for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

(b) "Electric utility" means an electrical company, as defined under RCW 80.04.010, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity in the state.

(c) "Vegetation" means trees, timber, or shrubs. [1999 c 248 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.12.040 Mitigating circumstances—Damages.** If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his or her own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [2012 c 117 § 193; Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

**64.12.050 Injunction to prevent waste on public land.** When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his or her complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he or she shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [2012 c 117 § 194; Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

*Injunction, generally: Chapter 7.40 RCW.*

**64.12.060 Action by occupant of unsurveyed land.** Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory,

for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: PROVIDED, ALWAYS, That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

**Reviser's note:** The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

**Preamble:** "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

**"Sec. 2.** Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

**"Sec. 3.** Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

## Chapter 64.16 RCW ALIEN LAND LAW

### Sections

- 64.16.005 Aliens' rights and interests in lands same as native citizens'.  
64.16.140 Certain titles confirmed.

**64.16.005 Aliens' rights and interests in lands same as native citizens'.** Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise, or descent; and he or she may convey, mortgage, and devise the same, and if he or she shall die intestate, the same shall descend to his or her heirs, and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [2012 c 117 § 195; 1967 c 163 § 2.]

**1967 c 163 adopted to implement Amendment 42:** "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.16.140 Certain titles confirmed.** All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent

that title was vested in or conveyed by said alien or aliens: PROVIDED, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

**Reviser's note:** 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

### Chapter 64.20 RCW

#### ALIENATION OF LAND BY INDIANS

##### Sections

- 64.20.010 Puyallup Indians—Right of alienation.  
 64.20.025 Puyallup Indians—Right of alienation—When effective.  
 64.20.030 Sale of land or materials authorized.

*Indian graves and records: Chapter 27.44 RCW.*

*Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.*

#### 64.20.010 Puyallup Indians—Right of alienation.

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

**Preamble:** "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within it boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions\* \* \* without the consent of the Congress;' and

'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

**64.20.025 Puyallup Indians—Right of alienation—When effective.** \*This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

**Reviser's note:** \*(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

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**64.20.030 Sale of land or materials authorized.** Any Indian who owns within this state any land or real estate allotted to him or her by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed, and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum, or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [2012 c 117 § 196; 1899 c 96 § 1; RRS § 10595.]

### Chapter 64.28 RCW

#### JOINT TENANCIES

##### Sections

- 64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.  
 64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.  
 64.28.030 Bank deposits, choses in action, community property agreements not affected.  
 64.28.040 Character of joint tenancy interests held by both spouses or both domestic partners.

**64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.** Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from both spouses or both domestic partners, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors. [2008 c 6 § 625; 1993 c 19 § 1; 1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.** (1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

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(2) Interests in common held in the names of both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [2008 c 6 § 626; 1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.030 Bank deposits, choses in action, community property agreements not affected.** The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of both spouses or both domestic partners to make agreements as provided in RCW 26.16.120. [2008 c 6 § 627; 1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.040 Character of joint tenancy interests held by both spouses or both domestic partners.** (1) Joint tenancy interests held in the names of both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both spouses or both domestic partners. Any such interest passes to the survivor of the spouse or survivor of the domestic partner as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either person in a marriage or either person in a state registered domestic partnership, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of either spouse, or both, or in the name of either domestic partner, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [2008 c 6 § 628; 1993 c 19 § 2; 1985 c 10 § 2. Prior: 1984 c 149 § 174.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Purpose—1985 c 10:** "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Chapter 64.32 RCW  
HORIZONTAL PROPERTY REGIMES ACT  
(CONDOMINIUMS)**

Sections

64.32.010	Definitions.
64.32.020	Application of chapter.
64.32.030	Apartments and common areas declared real property.
64.32.040	Ownership and possession of apartments and common areas.
64.32.050	Common areas and facilities.
64.32.060	Compliance with covenants, bylaws, and administrative rules and regulations.
64.32.070	Liens or encumbrances—Enforcement—Satisfaction.
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64.32.900	Short title.
64.32.910	Construction of term "this chapter."
64.32.920	Severability—1963 c 156.

*Condominiums created after July 1, 1990: Chapter 64.34 RCW.*

*Conversion of apartments into condominiums, notice required: RCW 59.18.200.*

*Mutual savings banks, powers as to condominiums: RCW 32.04.025.*

*RCW 64.34.380 through 64.34.390 concerning reserve accounts and reserve studies applicable to residential condominiums governed by chapter 64.32 RCW: RCW 64.34.380(4).*

**64.32.010 Definitions.** As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an

undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

(a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include:

(a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon

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the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter.

(15) "Percent of the apartment owners" means the apartment owners with the stated percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes. [2008 c 114 § 3; 1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

**Applicability of RCW 64.32.010(1) to houseboat moorages:** "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.32.020 Application of chapter.** This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

**64.32.030 Apartments and common areas declared real property.** Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

**64.32.040 Ownership and possession of apartments and common areas.** Each apartment owner shall be entitled to the exclusive ownership and possession of his or her apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [2012 c 117 § 197; 1963 c 156 § 4.]

**64.32.050 Common areas and facilities.** (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by tak-

ing as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

**64.32.060 Compliance with covenants, bylaws, and administrative rules and regulations.** Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration or in the deed to his or her apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [2012 c 117 § 198; 1963 c 156 § 6.]

**64.32.070 Liens or encumbrances—Enforcement—Satisfaction.** (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective

against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his or her rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [2012 c 117 § 199; 1963 c 156 § 7.]

**64.32.080 Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

**64.32.090 Contents of declaration.** The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;



(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

**64.32.100 Copy of survey map, building plans to be filed—Contents of plans.** Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;

(2) The number of the apartment and its dimensions;

(3) The approximate square footage of each unit;

(4) The number of bathrooms, whole or partial;

(5) The number of rooms to be used primarily as bedrooms;

(6) The number of built-in fireplaces;

(7) A statement of any scenic view which might affect the value of the apartment; and

(8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

*Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.*

**64.32.110 Ordinances, resolutions, or zoning laws—Construction.** Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

**64.32.120 Contents of deeds or other conveyances of apartments.** Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume and page or county auditor's recording number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1999 c 233 § 9; 1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.** At the time of the first conveyance of each apartment, every mortgage,

lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

**64.32.140 Recording.** The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded. [1963 c 156 § 14.]

**64.32.150 Removal of property from provisions of chapter.** (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: PROVIDED, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities.

(3) Subject to RCW 64.34.010 (1) and (2) and the rights of mortgagees and the holders of all liens affecting any of the apartments, the apartment owners may remove a property from the provisions of this chapter and terminate the condominium in the manner set forth in RCW 64.34.268 (1) through (7) and (10), in which event all of the provisions of RCW 64.34.268 (1) through (7) and (10) shall apply to such removal in lieu of subsections (1) and (2) of this section. [2008 c 114 § 2; 1963 c 156 § 15.]

**64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission.** The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

**64.32.170 Records and books—Availability for examination—Audits.** The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor

outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

**64.32.180 Exemption from liability for contribution for common expenses prohibited.** No apartment owner may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his or her apartment. [2012 c 117 § 200; 1963 c 156 § 18.]

**64.32.190 Separate assessments and taxation.** Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

**64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.** (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including, but not limited to, (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the

apartment as a result of foreclosure of the mortgage, such possessor, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his or her successors and assigns. [2012 c 117 § 201; 1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

**64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [2012 c 117 § 202; 1963 c 156 § 21.]

**64.32.220 Insurance.** The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his or her own apartment and/or the personal contents thereof for his or her benefit. [2012 c 117 § 203; 1963 c 156 § 22.]

**64.32.230 Destruction or damage to all or part of property—Disposition.** If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

**64.32.240 Actions.** Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his or her proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [2012 c 117 § 204; 1963 c 156 § 24.]

**64.32.250 Application of chapter, declaration and bylaws.** (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

**64.32.900 Short title.** This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

**64.32.910 Construction of term "this chapter."** The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

**64.32.920 Severability—1963 c 156.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

### Chapter 64.34 RCW CONDOMINIUM ACT

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*Condominiums created prior to July 1, 1990: Chapter 64.32 RCW.*

#### ARTICLE 1 GENERAL PROVISIONS

**64.34.005 Findings—Intent—2004 c 201.** (1) The legislature finds, declares, and determines that:

(a) Washington's cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act's planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the growth management act. [2004 c 201 § 1.]

**64.34.010 Applicability.** (1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and

building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and (k) through (t) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through 64.34.392 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

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

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

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants-relocation assistance), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [2011 c 189 § 6. Prior: 2008 c 115 § 7; 2008 c 114 § 1; 1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.34.020 Definitions.** In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the ref-

erenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

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

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

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

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

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

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

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

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

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

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

(12) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

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

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

(15) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (17) of this section; or

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

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

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

(16) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (5) or (6).

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

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

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

(20) "Effective age" means the difference between the estimated useful life and remaining useful life.

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

(22) "Foreclosure" means a forfeiture or judicial or non-judicial foreclosure of a mortgage or a deed in lieu thereof.

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

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

(25) "Identifying number" means the designation of each unit in a condominium.

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

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

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

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

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

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

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

(33) "Remaining useful life" means the estimated time, in years, before a reserve component will require major main-

tenance, repair, or replacement to perform its intended function.

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

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

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

(37) "Residential purposes" means use for dwelling or recreational purposes, or both.

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

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

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

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

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

(43) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur. [2011 c 189 § 1; 2008 c 115 § 8; 2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2011 c 189:** See note following RCW 64.38.065.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.030 Variation by agreement.** Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

**64.34.040 Separate interests—Taxation.** (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1992 c 220 § 3; 1989 c 43 § 1-105.]

**64.34.050 Local ordinances, regulations, and building codes—Applicability.** (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

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

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

**64.34.070 Law applicable—General principles.** The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

**64.34.073 Application of chapter 64.55 RCW.** Chapter 64.55 RCW includes requirements for: The inspection of the building enclosures of multiunit residential buildings, as defined in RCW 64.55.010, which includes condominiums and conversion condominiums; for provision of inspection and repair reports; and for the resolution of implied or express warranty disputes under chapter 64.34 RCW. [2005 c 456 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

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

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable,

the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

**64.34.090 Obligation of good faith.** Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

**64.34.100 Remedies liberally administered.** (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in RCW 64.55.100 through 64.55.160 or chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. The arbitration proceedings provided for in RCW 64.55.100 through 64.55.160 shall be considered judicial proceedings for the purposes of this chapter. [2005 c 456 § 20; 2004 c 201 § 2; 1989 c 43 § 1-113.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## ARTICLE 2 CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

**64.34.200 Creation of condominium.** (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certifi-



cate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.202 Reservation of condominium name.** Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request. [1992 c 220 § 5.]

**64.34.204 Unit boundaries.** Except as provided by the declaration:

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

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

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

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1992 c 220 § 6; 1989 c 43 § 2-102.]

**64.34.208 Declaration and bylaws—Construction and validity.** (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

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(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

**64.34.212 Description of units.** A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

**64.34.216 Contents of declaration.** (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to non-residential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under \*RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exer-

cise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and \*\*64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1992 c 220 § 7; 1989 c 43 § 2-105.]

**Reviser's note:** \*(1) RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36). RCW 64.34.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (36) to subsection (39), effective January 1, 2012.

\*\* (2) RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (4) to subsection (5), effective January 1, 2012.

**64.34.220 Leasehold condominiums.** (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

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

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

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

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

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

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

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

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the

interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

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

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

**64.34.224 Common element interests, votes, and expenses—Allocation.** (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1992 c 220 § 8; 1989 c 43 § 2-107.]

**64.34.228 Limited common elements.** (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the dec-

laration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1992 c 220 § 9; 1989 c 43 § 2-108.]

**64.34.232 Survey maps and plans.** (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on

plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

**64.34.236 Development rights.** (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

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

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

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

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

**64.34.240 Alterations of units.** Subject to the provisions of the declaration and other provisions of law, a unit owner:

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

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

**64.34.244 Relocation of boundaries—Adjoining units.**

(1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

**64.34.248 Subdivision of units.** (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

**64.34.252 Monuments as boundaries.** The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the

building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

**64.34.256 Use by declarant.** A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1992 c 220 § 11; 1989 c 43 § 2-115.]

**64.34.260 Easement rights—Common elements.** Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

**64.34.264 Amendment of declaration.** (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated

other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

**64.34.268 Termination of condominium.** (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion

of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

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

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

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

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has

not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1992 c 220 § 12; 1989 c 43 § 2-118.]

**64.34.272 Rights of secured lenders.** The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

**64.34.276 Master associations.** (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or non-profit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master associ-

ation, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of \*RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

\*Reviser's note: RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (6) to subsection (7), effective January 1, 2012.

**64.34.278 Delegation of power to subassociations.** (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of \*RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation. [1992 c 220 § 13.]

\*Reviser's note: RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (6) to subsection (7), effective January 1, 2012.

**64.34.280 Merger or consolidation.** (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

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

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

ARTICLE 3  
MANAGEMENT OF CONDOMINIUM

**64.34.300 Unit owners' association—Organization.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1992 c 220 § 14; 1989 c 43 § 3-101.]

**64.34.304 Unit owners' association—Powers.** (1)

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

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;
- (l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale

certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Establish and administer a reserve account as described in RCW 64.34.380;

(q) Prepare a reserve study as described in RCW 64.34.380;

(r) Exercise any other powers conferred by the declaration or bylaws;

(s) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [2008 c 115 § 9; 1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

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

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

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the



declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

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

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

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

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

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

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

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

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

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

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the

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declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (5)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(6) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(7) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [2011 c 189 § 2; 1992 c 220 § 15; 1989 c 43 § 3-103.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.34.312 Control of association—Transfer.** (1) Within sixty days after the termination of the period of declarant control provided in \*RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

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

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

(p) Any leases of the common elements or areas and other leases to which the association is a party;

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

(r) A copy of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were

for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [2004 c 201 § 10; 1989 c 43 § 3-104.]

**\*Reviser's note:** RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (4) to subsection (5), effective January 1, 2012.

**64.34.316 Special declarant rights—Transfer.** (1) No special declarant right, as described in \*RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

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

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

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

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

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in \*\*RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

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

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

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of \*\*RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under \*\*RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration. [1989 c 43 § 3-105.]

**Reviser's note:** \*(1) RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36). RCW 64.34.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (36) to subsection (39), effective January 1, 2012.

\*\*RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (4) to subsection (5), effective January 1, 2012.

(2016 Ed.)

**64.34.320 Contracts and leases—Declarant—Termination.** If entered into before the board of directors elected by the unit owners pursuant to \*RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to \*RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

**\*Reviser's note:** RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (6) to subsection (7), effective January 1, 2012.

**64.34.324 Bylaws.** (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of \*RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [2004 c 201 § 3; 1992 c 220 § 16; 1989 c 43 § 3-107.]

**\*Reviser's note:** RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (32) to subsection (39). RCW 64.34.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (39) to subsection (42), effective January 1, 2012.

**64.34.328 Upkeep of condominium.** (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

**64.34.332 Meetings.** A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

**64.34.336 Quorums.** (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

**64.34.340 Voting—Proxies.** (1) If only one of the multiple owners of a unit is present at a meeting of the association or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are pres-

ent or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1992 c 220 § 17; 1989 c 43 § 3-111.]

**64.34.344 Tort and contract liability.** Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this sec-

tion because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

**64.34.348 Common elements—Conveyance—**

**Encumbrance.** (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

**64.34.352 Insurance.** (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent,

or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

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

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first-class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

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

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

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

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

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

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

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of

the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.354 Insurance—Conveyance.** Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.356 Surplus funds.** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to

reduce their future common expense assessments. [1989 c 43 § 3-115.]

**64.34.360 Common expenses—Assessments.** (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

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

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.364 Lien for assessments.** (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for cap-

ital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or material suppliers' liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in

this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the

amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [2013 c 23 § 175; 1990 c 166 § 6; 1989 c 43 § 3-117.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.368 Liens—General provisions.** (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

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

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

**64.34.372 Association records—Funds.** (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declar-

ant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.376 Association as trustee.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

**64.34.380 Reserve account—Reserve study—Annual update.** (1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

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

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

(4) This section and RCW 64.34.382 through 64.34.392 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements. [2011 c 189 § 3; 2008 c 115 § 1.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.34.382 Reserve study—Contents.** (1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing



a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

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

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

(c) The following level of reserve study performed:

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

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

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

(d) The association's reserve account balance;

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

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rate;

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

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

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

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

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

[2011 c 189 § 4; 2008 c 115 § 2.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

(2016 Ed.)

**64.34.384 Reserve account—Withdrawals.** An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section. [2011 c 189 § 5; 2008 c 115 § 3.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.34.386 Reserve study—Demand by owners—Study not timely prepared.** (1) Where more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners of the units to which at least twenty percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be obtained by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide unit owners making the demand reasonable assurance that the board of directors will include a reserve study in the next budget and, if the budget is not rejected by the owners, will arrange for the completion of a reserve study.

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

(3) A unit owner's duty to pay for common expenses shall not be excused because of the association's failure to comply with this section or RCW 64.34.382 through 64.34.390. A budget ratified by the unit owners under RCW 64.34.308(3) may not be invalidated because of the association's failure to comply with this section or RCW 64.34.382 through 64.34.390. [2008 c 115 § 4.]

**64.34.388 Reserve study—Decision making.** Subject to RCW 64.34.386, the decisions relating to the preparation and updating of a reserve study must be made by the board of directors of the association in the exercise of the reasonable discretion of the board. Such decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2008 c 115 § 5.]

[Title 64 RCW—page 49]

**64.34.390 Reserve study—Reserve account—Immunity from liability.** Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with RCW 64.34.380 through 64.34.388; or make the reserve disclosures in accordance with RCW 64.34.382 and 64.34.410(1)(oo) and 64.34.425(1)(s). [2008 c 115 § 6.]

**64.34.392 Reserve account and study—Exemption—Disclosure.** (1) A condominium association with ten or fewer unit owners is not required to follow the requirements under RCW 64.34.380 through 64.34.390 if two-thirds of the owners agree to exempt the association from the requirements.

(2) The unit owners must agree to maintain an exemption under subsection (1) of this section by a two-thirds vote every three years.

(3) Notwithstanding subsections (1) and (2) of this section, a disclosure that the condominium association does not have a reserve study must be included in a unit's public offering statement as required under RCW 64.34.410 or resale certificate as required under RCW 64.34.425. [2009 c 307 § 1.]

#### ARTICLE 4

#### PROTECTION OF CONDOMINIUM PURCHASERS

**64.34.400 Applicability—Waiver.** (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition of all of the units in a condominium in a single transaction;
- (f) A disposition to other than a purchaser as defined in \*RCW 64.34.020(26); or
- (g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

**\*Reviser's note:** RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (26) to subsection (29). RCW 64.34.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (29) to subsection (31), effective January 1, 2012.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.405 Public offering statement—Requirements—Liability.** (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

**64.34.410 Public offering statement—General provisions.** (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condo-

minium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construc-

tion, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in \*RCW 64.34.020(11);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty;

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090; and

(oo) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your

share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, the association's current reserve study, if any, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2008 c 115 § 10; 2005 c 456 § 19; 2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

\*Reviser's note: RCW 64.34.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11) to subsection (12), effective January 1, 2012.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.415 Public offering statement—Conversion condominiums.** (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A copy of the inspection and repair report prepared by an independent, licensed architect, engineer, or qualified building inspector in accordance with the requirements of RCW 64.55.090;

(c) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(d) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific

violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [2005 c 456 § 18; 1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.417 Public offering statement—Use of single disclosure document.** If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed.** In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.420 Purchaser's right to cancel.** (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a pur-

chaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

**64.34.425 Resale of unit.** (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, the association's current reserve study, if any, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association;

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(s) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(I), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed two hundred seventy-five dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided

and for five days thereafter or until conveyance, whichever occurs first. [2011 c 48 § 1; 2008 c 115 § 11; 2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.430 Escrow of deposits.** Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1992 c 220 § 24; 1989 c 43 § 4-108.]

**64.34.435 Release of liens—Conveyance.** (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

**64.34.440 Conversion condominiums—Notice—Tenants—Relocation assistance.** (1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

- (i) Set forth generally the rights of tenants and subtenants under this section;
- (ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and
- (iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom;

(e)(i) A declarant shall pay relocation assistance, in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(A) Who do not elect to purchase a unit;

(B) Who are in lawful occupancy for residential purposes of a unit; and

(C) Whose annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of:

(I) The annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located; or

(II) If the condominium is not within a standard metropolitan statistical area, the annual median income for comparably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self-care; and

(B) "Elderly" means a person who is at least sixty-five years of age;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condo-

minium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [2008 c 113 § 1; 1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

**Application—2008 c 113:** "This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before August 1, 2008." [2008 c 113 § 5.]

**Effective date—2008 c 113:** "This act takes effect August 1, 2008." [2008 c 113 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.442 Conversion condominium projects—Report.** (1) All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the \*department of community, trade, and economic development the following information:

(a) The total number of apartment units converted into condominiums;

(b) The total number of conversion condominium projects; and

(c) The total number of apartment tenants who receive relocation assistance.

(2) Upon completion of a conversion condominium project, a city or county may require the declarant to provide the information described in subsection (1) of this section to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section. [2008 c 113 § 3.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Application—Effective date—2008 c 113:** See notes following RCW 64.34.440.

**64.34.443 Express warranties of quality.** (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to \*RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

**\*Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

**\*Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.445 Implied warranties of quality—Breach.** (1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.



(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value. [2004 c 201 § 5; 1992 c 220 § 26; 1989 c 43 § 4-112.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.450 Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty.** (1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is effective, except that a declarant or dealer may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445. [2004 c 201 § 6; 1989 c 43 § 4-113.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.452 Warranties of quality—Breach—Actions for construction defect claims.** (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four

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years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under \*RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or [for] breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW. [2004 c 201 § 7; 2002 c 323 § 11; 1990 c 166 § 14.]

\*Reviser's note: RCW 64.34.308 was amended by 2011 c 189 § 2, changing subsection (4) to subsection (5), effective January 1, 2012.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.455 Effect of violations on rights of action—Attorney's fees.** If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

**64.34.460 Labeling of promotional material.** If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

**64.34.465 Improvements—Declarant's duties.** (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

#### ARTICLE 5 MISCELLANEOUS

**64.34.900 Short title.** This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

**64.34.910 Section captions.** Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

**64.34.930 Effective date—1989 c 43.** This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

**64.34.931 Effective date—2004 c 201 §§ 1-13.** Sections 1 through 13 of this act take effect July 1, 2004. [2004 c 201 § 14.]

**64.34.940 Construction against implicit repeal.** This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

**64.34.950 Uniformity of application and construction.** This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

### Chapter 64.35 RCW

#### CONDOMINIUMS—QUALIFIED WARRANTIES

##### Sections

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#### ARTICLE 1 GENERAL PROVISIONS

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

- (1) "Affiliate" has the meaning in RCW 64.34.020.
- (2) "Association" has the meaning in RCW 64.34.020.
- (3) "Building envelope" means the assemblies, components, and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions.
- (4) "Common element" has the meaning in RCW 64.34.020.
- (5) "Condominium" has the meaning in RCW 64.34.020.
- (6) "Construction professional" has the meaning in RCW 64.50.010.
- (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- (8) "Declarant" has the meaning in RCW 64.34.020.
- (9) "Declarant control" has the meaning in RCW 64.34.020.
- (10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.
- (11) "Limited common element" has the meaning in RCW 64.34.020.
- (12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render

the unit or common element unfit for its intended purpose or uninhabitable.

(13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.

(14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.

(15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.

(16) "Person" has the meaning in RCW 64.34.020.

(17) "Public offering statement" has the meaning in RCW 64.34.410.

(18) "Qualified insurer" means an entity that holds a certificate of authority under RCW 48.05.030, or an eligible insurer under chapter 48.15 RCW.

(19) "Qualified warranty" means an insurance policy issued by a qualified insurer that complies with the requirements of this chapter. A qualified warranty includes coverage for repair of physical damage caused by the defects covered by the qualified warranty, except to the extent of any exclusions and limitations under this chapter.

(20) "Resale certificate" means the statement to be delivered by the association under RCW 64.34.425.

(21) "Transition date" means the date on which the declarant is required to deliver to the association the property of the association under RCW 64.34.312.

(22) "Unit" has the meaning in RCW 64.34.020.

(23) "Unit owner" has the meaning in RCW 64.34.020. [2004 c 201 § 101.]

**64.35.106 Qualified warrantees—Application of RCW 48.01.040.** All qualified warrantees shall be deemed to be "insurance" for purposes of RCW 48.01.040, and shall be regulated as such. [2004 c 201 § 2001.]

**64.35.110 No duty to offer a qualified warranty—Insurer sets terms—Scope of inquiry—Conditions.** (1) No insurer is bound to offer a qualified warranty to any person. Except as specifically set forth in this section, the terms of any qualified warranty are set in the sole discretion of the qualified insurer. Without limiting the generality of this subsection, a qualified insurer may make inquiries about the applicant as follows:

(a) Does the applicant have the financial resources to undertake the construction of the number of units being proposed by the applicant's business plan for the following twelve months;

(b) Does the applicant and its directors, officers, employees, and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of units;

(c) Does the applicant and its directors and officers have sufficient experience in business management to properly manage the unit construction process;

(d) Does the applicant and its directors, officers, and employees have sufficient practical experience to undertake the proposed unit construction;

(e) Does the past conduct of the applicant and its directors, officers, employees, and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements; and

(f) Is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the units to be constructed.

(2) A qualified insurer may charge a fee to make the inquiries permitted by subsection (1) of this section.

(3) Before approving a qualified warranty for a condominium, a qualified insurer may make such inquiries and impose such conditions as it deems appropriate in its sole discretion, including without limitation the following:

(a) To determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed unit;

(b) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants possess reasonable technical expertise to construct the proposed unit, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies, and testing and inspection methods proposed to be employed;

(c) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed unit;

(d) To determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed unit in addition to other units which the applicant may have under construction or is currently marketing;

(e) To determine if:

(i) The applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed unit; and

(ii) The general contractor meets the criteria set out in this section;

(f) Requiring that a declarant provide security in a form suitable to the qualified insurer;

(g) Establishing or requiring compliance with specific construction standards for the unit;

(h) Restricting the applicant from constructing some types of units or using some types of construction or systems;

(i) Requiring the use of specific types of systems, consultants, or personnel for the construction;

(j) Requiring an independent review of the unit building plans or consultants' reports or any part thereof;

(k) Requiring third-party verification or certification of the construction of the unit or any part thereof;

(l) Providing for inspection of the unit or any part thereof during construction;

(m) Requiring ongoing monitoring of the unit, or one or more of its components, following completion of construction;

(n) Requiring that the declarant or any of the design professionals, engineering professionals, consultants, general contractors, or subcontractors maintain minimum levels of insurance, bonding, or other security naming the potential

owners and qualified insurer as loss payees or beneficiaries of the insurance, bonding, or security to the extent possible;

(o) Requiring that the declarant provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the unit;

(p) Requiring that the declarant provide a list of trades employed in the construction of the unit, and requiring evidence of their current trade's certification, if applicable. [2004 c 201 § 1901.]

**64.35.115 Attorneys' fees.** In any judicial proceeding or arbitration brought to enforce the terms of a qualified warranty, the court or arbitrator may award reasonable attorneys' fees to the substantially prevailing party. In no event may such fees exceed the reasonable hourly value of the attorney's work. [2004 c 201 § 1701.]

**64.35.120 Change of ownership—Coverage transfers.** (1) A qualified warranty pertains solely to the unit and common elements for which it provides coverage and no notice to the qualified insurer is required on a change of ownership.

(2) All of the applicable unused benefits under a qualified warranty with respect to a unit are automatically transferred to any subsequent owner on a change of ownership. [2004 c 201 § 1801.]

#### ARTICLE 2

#### REMEDY, PROCEDURE, AND DISCLOSURE UNDER A QUALIFIED WARRANTY

**64.35.205 Qualified warranty—Remedy and procedure—Application of chapter 64.50 RCW.** No declarant, affiliate of a declarant, or construction professional is liable to a unit owner or an association for damages awarded for repair of construction defects and resulting physical damage, and chapter 64.50 RCW shall not apply if: (1) Every unit is the subject of a qualified warranty; and (2) the association has been issued a qualified warranty with respect to the common elements. If a construction professional agrees on terms satisfactory to the qualified insurer to partially or fully indemnify the qualified insurer with respect to a defect caused by the construction professional, the liability of the construction professional for the defect and resulting physical damage caused by him or her shall not exceed damages recoverable under the terms of the qualified warranty for the defect. Any indemnity claim by the qualified insurer shall be by separate action or arbitration, and no unit owner or association shall be joined therein. A qualified warranty may also be provided in the case of improvements made or contracted for by a declarant as part of a conversion condominium, and in such case, declarant's liability with respect to such improvements shall be limited as set forth in this section. [2004 c 201 § 201.]

**64.35.210 Notice of qualified warranty—History of claims.** (1) Every public offering statement and resale certificate shall affirmatively state whether or not the unit and/or the common elements are covered by a qualified warranty, and shall provide to the best knowledge of the person preparing the public offering statement or resale certificate a history of claims under the warranty.

(2) The history of claims must include, for each claim, not less than the following information for the unit and/or the common elements, as applicable, to the best knowledge of the person providing the information:

(a) The type of claim that was made;

(b) The resolution of the claim;

(c) The type of repair performed;

(d) The date of the repair;

(e) The cost of the repair; and

(f) The name of the person or entity who performed the repair. [2004 c 201 § 301.]

#### ARTICLE 3

#### MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES

**64.35.305 Two-year materials and labor warranty—Noncompliance with building code.** (1) The minimum coverage for the two-year materials and labor warranty is:

(a) In the first twelve months, for other than the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(b) In the first fifteen months, for the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(c) In the first twenty-four months, (i) coverage for any defect in materials and labor supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems; (ii) coverage for any defect in materials and labor supplied for the exterior cladding, caulking, windows, and doors that may lead to detachment or material damage to the unit or common elements; (iii) coverage for any defect in materials and labor which renders the unit unfit to live in; and (iv) subject to subsection (2) of this section, coverage for a violation of the building code.

(2) Noncompliance with the building code is considered a defect covered by a qualified warranty if the noncompliance:

(a) Constitutes an unreasonable health or safety risk; or

(b) Has resulted in, or is likely to result in, material damage to the unit or common elements. [2004 c 201 § 401.]

**64.35.310 Five-year building envelope warranty.** The minimum coverage for the building envelope warranty is five years for defects in the building envelope of a condominium, including a defect which permits unintended water penetration so that it causes, or is likely to cause, material damage to the unit or common elements. [2004 c 201 § 402.]

**64.35.315 Ten-year structural defects warranty.** The minimum coverage for the structural defects warranty is ten years for:

(1) Any defect in materials and labor that results in the failure of a load-bearing part of the condominium; and

(2) Any defect which causes structural damage that materially and adversely affects the use of the condominium for residential occupancy. [2004 c 201 § 403.]

**64.35.320 Beginning dates for warranty coverage.**

(1) For the unit, the beginning date of the qualified warranty coverage is the earlier of:

- (a) Actual occupancy of the unit; or
- (b) Transfer of legal title to the unit.

(2) For the common elements, the beginning date of a qualified warranty is the date a temporary or final certificate of occupancy is issued for the common elements in each separate multiunit building, comprised by the condominium. [2004 c 201 § 404.]

**64.35.325 Beginning dates for warranty coverage—**

**Special cases—Declarant control.** (1) If an unsold unit is occupied as a rental unit, the qualified warranty beginning date for such unit is the date the unit is first occupied.

(2) If the declarant subsequently offers to sell a unit which is rented, the declarant must disclose, in writing, to each prospective purchaser, the date on which the qualified warranty expires.

(3) If the declarant retains any declarant control over the association on the date that is fourteen full calendar months following the month in which the beginning date for common element warranty coverage commences, the declarant shall within thirty days thereafter cause an election to be held in which the declarant may not vote, for the purpose of electing one or more board members who are empowered to make warranty claims. If at such time, one or more independent board members hold office, no additional election need be held, and such independent board members are empowered to make warranty claims. The declarant shall inform all independent board members of their right to make warranty claims at no later than sixteen full calendar months following the beginning date of the common element warranty. [2004 c 201 § 405.]

**64.35.330 Living expense allowance.**

(1) If repairs are required under the qualified warranty and damage to the unit, or the extent of the repairs renders the unit uninhabitable, the qualified warranty must cover reasonable living expenses incurred by the owner to live elsewhere in an amount commensurate with the nature of the unit.

(2) If a qualified insurer establishes a maximum amount per day for claims for living expenses, the limit must be the greater of one hundred dollars per day or a reasonable amount commensurate with the nature of the unit for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel, or other rental accommodation up to the day the unit is ready for occupancy, subject to the owner receiving twenty-four hours' advance notice. [2004 c 201 § 406.]

**64.35.335 Warranty on repairs and replacements.**

(1) All repairs and replacements made under a qualified warranty must be warranted by the qualified warranty against defects in materials and labor until the later of:

- (a) The first anniversary of the date of completion of the repair or replacement; or
- (b) The expiration of the applicable qualified warranty coverage.

(2) All repairs and replacements made under a qualified warranty must be completed in a reasonable manner using

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materials and labor conforming to the building code and industry standards. [2004 c 201 § 407.]

## ARTICLE 4

## QUALIFIED WARRANTY TERMS

**64.35.405 Provisions a qualified insurer may include.**

A qualified insurer may include any of the following provisions in a qualified warranty:

(1) If the qualified insurer makes a payment or assumes liability for any payment or repair under a qualified warranty, the owner and association must fully support and assist the qualified insurer in pursuing any rights that the qualified insurer may have against the declarant, and any construction professional that has contractual or common law obligations to the declarant, whether such rights arose by contract, subrogation, or otherwise.

(2) Warranties or representations made by a declarant which are in addition to the warranties set forth in this chapter are not binding on the qualified insurer unless and to the extent specifically provided in the text of the warranty; and disclaimers of specific defects made by agreement between the declarant and the unit purchaser under RCW 64.34.450 act as an exclusion of the specified defect from the warranty coverage.

(3) An owner and the association must permit the qualified insurer or declarant, or both, to enter the unit at reasonable times, after reasonable notice to the owner and the association:

- (a) To monitor the unit or its components;
- (b) To inspect for required maintenance;
- (c) To investigate complaints or claims; or
- (d) To undertake repairs under the qualified warranty.

If any reports are produced as a result of any of the activities referred to in (a) through (d) of this subsection, the reports must be provided to the owner and the association.

(4) An owner and the association must provide to the qualified insurer all information and documentation that the owner and the association have available, as reasonably required by the qualified insurer to investigate a claim or maintenance requirement, or to undertake repairs under the qualified warranty.

(5) To the extent any damage to a unit is caused or made worse by the unreasonable refusal of the association, or an owner or occupant to permit the qualified insurer or declarant access to the unit for the reasons in subsection (3) of this section, or to provide the information required by subsection (4) of this section, that damage is excluded from the qualified warranty.

(6) In any claim under a qualified warranty issued to the association, the association shall have the sole right to prosecute and settle any claim with respect to the common elements. [2004 c 201 § 501.]

**64.35.410 Authorized exclusions—General.** (1) A qualified insurer may exclude from a qualified warranty:

- (a) Landscaping, both hard and soft, including plants, fencing, detached patios, planters not forming a part of the building envelope, gazebos, and similar structures;
- (b) Any commercial use area and any construction associated with a commercial use area;

- (c) Roads, curbs, and lanes;
  - (d) Subject to subsection (2) of this section, site grading and surface drainage except as required by the building code;
  - (e) Municipal services operation, including sanitary and storm sewer;
  - (f) Septic tanks or septic fields;
  - (g) The quality or quantity of water, from either a piped municipal water supply or a well;
  - (h) A water well, but excluding equipment installed for the operation of a water well used exclusively for a unit, which equipment is part of the plumbing system for that unit for the purposes of the qualified warranty.
- (2) The exclusions permitted by subsection (1) of this section do not include any of the following:
- (a) A driveway or walkway;
  - (b) Recreational and amenity facilities situated in, or included as the common property of, a unit;
  - (c) A parking structure in a multiunit building;
  - (d) A retaining wall that:
  - (i) An authority with jurisdiction requires to be designed by a professional engineer; or
  - (ii) Is reasonably required for the direct support of, or retaining soil away from, a unit, driveway, or walkway. [2004 c 201 § 601.]

**64.35.415 Authorized exclusions—Defects.** A qualified insurer may exclude any or all of the following items from a qualified warranty:

- (1) Weathering, normal wear and tear, deterioration, or deflection consistent with normal industry standards;
- (2) Normal shrinkage of materials caused by drying after construction;
- (3) Any loss or damage which arises while a unit is being used primarily or substantially for nonresidential purposes;
- (4) Materials, labor, or design supplied by an owner;
- (5) Any damage to the extent caused or made worse by an owner or third party, including:
  - (a) Negligent or improper maintenance or improper operation by anyone other than the declarant or its employees, agents, or subcontractors;
  - (b) Failure of anyone, other than the declarant or its employees, agents, or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment, or fixtures;
  - (c) Alterations to the unit, including converting nonliving space into living space or converting a unit into two or more units, by anyone other than the declarant or its employees, agents, or subcontractors while undertaking their obligations under the sales contract; and
  - (d) Changes to the grading of the ground by anyone other than the declarant or its employees, agents, or subcontractors;
- (6) An owner failing to take timely action to prevent or minimize loss or damage, including failing to give prompt notice to the qualified insurer of a defect or discovered loss, or a potential defect or loss;
- (7) Any damage caused by insects, rodents, or other animals, unless the damage results from noncompliance with the building code by the declarant or its employees, agents, or subcontractors;
- (8) Accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape,

glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the declarant;

(9) Bodily injury or damage to personal property or real property which is not part of a unit;

(10) Any defect in, or caused by, materials or work supplied by anyone other than the declarant, an affiliate of a declarant, or their respective contractors, employees, agents, or subcontractors;

(11) Changes, alterations, or additions made to a unit by anyone after initial occupancy, except those performed by the declarant or its employees, agents, or subcontractors as required by the qualified warranty or under the construction contract or sales agreement;

(12) Contaminated soil;

(13) Subsidence of the land around a unit or along utility lines, other than subsidence beneath footings of a unit or under driveways or walkways;

(14) Diminution in the value of the unit. [2004 c 201 § 701.]

**64.35.420 Limits on amounts—Calculation of costs—Adjustments.** (1) A qualified insurer may establish a monetary limit on the amount of the warranty. Any limit must not be less than:

(a) For a unit, the lesser of (i) the original purchase price paid by the owner, or (ii) one hundred thousand dollars;

(b) For common elements, the lesser of (i) the total original purchase price for all components of the multiunit building, or (ii) one hundred fifty thousand dollars times the number of units of the condominium.

(2) When calculating the cost of warranty claims under the standard limits under a qualified warranty, a qualified insurer may include:

(a) The cost of repairs;

(b) The cost of any investigation, engineering, and design required for the repairs; and

(c) The cost of supervision of repairs, including professional review, but excluding legal costs.

(3) The minimum amounts in subsections (1) and (2) of this section shall be adjusted at the end of each calendar year after the effective date by an amount equal to the percentage change in the consumer price index for all urban consumers, all items, as published from time to time by the United States department of labor. The adjustment does not affect any qualified warranty issued before the adjustment date. [2004 c 201 § 801.]

**64.35.425 Prohibited policy provisions—Exclusions.** (1) A qualified insurer must not include in a qualified warranty any provision that requires an owner or the association:

(a) To sign a release before repairs are performed under the qualified warranty; or

(b) To pay a deductible in excess of five hundred dollars for the repair of any defect in a unit covered by the qualified warranty, or in excess of the lesser of five hundred dollars per unit or ten thousand dollars in the aggregate for any defect in the common elements.

(2) All exclusions must be permitted by this chapter and stated in the qualified warranty. [2004 c 201 § 901.]

ARTICLE 5  
DUTIES OF PARTIES REGARDING  
COVERAGE AND CLAIMS

**64.35.505 Failure to provide information—Conditions or exclusions may not apply.** (1) If coverage under a qualified warranty is conditional on an owner undertaking proper maintenance, or if coverage is excluded for damage caused by negligence by the owner or association with respect to maintenance or repair by the owner or association, the conditions or exclusions apply only to maintenance requirements or procedures: (a) Provided to the original owner in the case of the unit warranty, and to the association for the common element warranty with an estimation of the required cost thereof for the common element warranty provided in the budget prepared by the declarant; or (b) that would be obvious to a reasonable and prudent layperson. Recommended maintenance requirements and procedures are sufficient for purposes of this subsection if consistent with knowledge generally available in the construction industry at the time the qualified warranty is issued.

(2) If an original owner or the association has not been provided with the manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a unit, the relevant exclusion does not apply. The common element warranty is included in the written warranty to be provided to the association under RCW 64.34.312. [2004 c 201 § 1001.]

**64.35.510 Schedule of expiration dates must be provided.** (1) A qualified insurer must, as soon as reasonably possible after the beginning date for the qualified warranty, provide an owner and association with a schedule of the expiration dates for coverages under the qualified warranty as applicable to the unit and the common elements, respectively.

(2) The expiration date schedule for a unit must set out all the required dates on an adhesive label that is a minimum size of four inches by four inches and is suitable for affixing by the owner in a conspicuous location in the unit. [2004 c 201 § 1101.]

**64.35.515 Duty to mitigate may be required.** (1) The qualified insurer may require an owner or association to mitigate any damage to a unit or the common elements, including damage caused by defects or water penetration, as set out in the qualified warranty.

(2) Subject to subsection (3) of this section, for defects covered by the qualified warranty, the duty to mitigate is met through timely notice in writing to the qualified insurer.

(3) The owner must take all reasonable steps to restrict damage to the unit if the defect requires immediate attention.

(4) The owner's duty to mitigate survives even if:

- (a) The unit is unoccupied;
- (b) The unit is occupied by someone other than the owner;
- (c) Water penetration does not appear to be causing damage; or
- (d) The owner advises the homeowners' association corporation about the defect.

(5) If damage to a unit is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set

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out in this section, the damage may, at the option of the qualified insurer, be excluded from qualified warranty coverage. [2004 c 201 § 1201.]

**64.35.520 Notice of claim—Reasonable timeliness and detail—Contents.** (1) Within a reasonable time after the discovery of a defect and before the expiration of the applicable qualified warranty coverage, a claimant must give to the qualified insurer and the declarant written notice in reasonable detail that provides particulars of any specific defects covered by the qualified warranty.

(2) The qualified insurer may require the notice under subsection (1) of this section to include:

- (a) The qualified warranty number; and
- (b) Copies of any relevant documentation and correspondence between the claimant and the declarant, to the extent any such documentation and correspondence is in the control or possession of the claimant. [2004 c 201 § 1301.]

**64.35.525 Handling of claim—Prompt response—Procedures.** A qualified insurer must, on receipt of a notice of a claim under a qualified warranty, promptly make reasonable attempts to contact the claimant to arrange an evaluation of the claim. Claims shall be handled in accordance with the claims procedures set forth in rules by the insurance commissioner, and as follows:

(1) The qualified insurer must make all reasonable efforts to avoid delays in responding to a claim under a qualified warranty, evaluating the claim, and scheduling any required repairs.

(2) If, after evaluating a claim under a qualified warranty, the qualified insurer determines that the claim is not valid, or not covered under the qualified warranty, the qualified insurer must: (a) Notify the claimant of the decision in writing; (b) set out the reasons for the decision; and (c) set out the rights of the parties under the third-party dispute resolution process for the warranty.

(3) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labor.

(4) On completing any repairs, the qualified insurer must deliver a copy of the repair specifications to the claimant along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in RCW 64.35.335. [2004 c 201 § 1401.]

ARTICLE 6  
MEDIATION OR ARBITRATION OF DISPUTES

**64.35.605 Disputed claim—Notice—Mediation procedures—Duties of parties.** (1) If a dispute between a qualified insurer and a claimant arising under a qualified warranty cannot be resolved by informal negotiation within a reasonable time, the claimant or qualified insurer may require that the dispute be referred to mediation by delivering written notice to the other to mediate.

(2) If a party delivers a request to mediate under subsection (1) of this section, the qualified insurer and the party must attend a mediation session in relation to the dispute and may invite to participate in the mediation any other party to the dispute who may be liable.

(3) Within twenty-one days after the party has delivered a request to mediate under subsection (1) of this section, the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(4) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (3) of this section, the party may apply to the superior court of the county where the project is located, which must appoint a mediator taking into account:

- (a) The need for the mediator to be neutral and independent;
- (b) The qualifications of the mediator;
- (c) The mediator's fees;
- (d) The mediator's availability; and
- (e) Any other consideration likely to result in the selection of an impartial, competent, and effective mediator.

(5) After selecting the mediator under subsection (4) of this section, the superior court must promptly notify the parties in writing of that selection.

(6) The mediator selected by the superior court is deemed to be appointed by the parties effective the date of the notice sent under subsection (5) of this section.

(7) The first mediation session must occur within twenty-one days of the appointment of the mediator at the date, time, and place selected by the mediator.

(8) A party may attend a mediation session by representative if:

- (a) The party is under a legal disability and the representative is that party's guardian ad litem;
- (b) The party is not an individual; or
- (c) The party is a resident of a jurisdiction other than Washington and will not be in Washington at the time of the mediation session.

(9) A representative who attends a mediation session in the place of a party as permitted by subsection (8) of this section:

- (a) Must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely; and
- (b) Must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(10) A party or a representative who attends the mediation session may be accompanied by counsel.

(11) Any other person may attend a mediation session on consent of all parties or their representatives.

(12) At least seven days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out:

- (a) The facts on which the party intends to rely; and
- (b) The matters in dispute.

(13) The mediator must promptly send each party's statement to each of the other parties.

(14) Before the first mediation session, the parties must enter into a retainer agreement with the mediator which must:

- (a) Disclose the cost of the mediation services; and
- (b) Provide that the cost of the mediation will be paid:
  - (i) Equally by the parties; or
  - (ii) On any other specified basis agreed by the parties.

(15) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair, and cost-effective.

(16) A person may not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(17) Nothing in subsection (16) of this section precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(18) A mediation session is concluded when:

- (a) All issues are resolved;
- (b) The mediator determines that the process will not be productive and so advises the parties or their representatives; or
- (c) The mediation session is completed and there is no agreement to continue.

(19) If the mediation resolves some but not all issues, the mediator may, at the request of all parties, complete a report setting out any agreements made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

- (a) Facts;
- (b) Issues; and
- (c) Future procedural steps. [2004 c 201 § 1501.]

**64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of parties.** A qualified warranty may include mandatory binding arbitration of all disputes arising out of or in connection with a qualified warranty. The provision may provide that all claims for a single condominium be heard by the same arbitrator, but shall not permit the joinder or consolidation of any other person or entity. The arbitration shall comply with the following minimum procedural standards:

(1) Any demand for arbitration shall be delivered by certified mail return receipt requested, and by ordinary first-class mail. The party initiating the arbitration shall address the notice to the address last known to the initiating party in the exercise of reasonable diligence, and also, for any entity which is required to have a registered agent in the state of Washington, to the address of the registered agent. Demand for arbitration is deemed effective three days after the date deposited in the mail;

(2) All disputes shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. If three arbitrators are used, one shall be appointed by each of the disputing parties and the first two arbitrators shall appoint the third, who will chair the panel. The parties shall select the identity and number of the arbitrator or arbitrators after the demand for arbitration is made. If, within thirty days after the effective date of the demand for arbitration, the parties fail to agree on an arbitrator or the agreed number of arbitrators fail to be appointed, then an arbitrator or arbitrators shall be appointed under \*RCW 7.04.050 by the presiding judge of the superior court of the county in which the condominium is located;

(3) In any arbitration, at least one arbitrator must be a lawyer or retired judge. Any additional arbitrator must be



either a lawyer or retired judge or a person who has experience with construction and engineering standards and practices, written construction warranties, or construction dispute resolution. No person may serve as an arbitrator in any arbitration in which that person has any past or present financial or personal interest;

(4) The arbitration hearing must be conducted in a manner that permits full, fair, and expeditious presentation of the case by both parties. The arbitrator is bound by the law of Washington state. Parties may be, but are not required to be, represented by attorneys. The arbitrator may permit discovery to ensure a fair hearing, but may limit the scope or manner of discovery for good cause to avoid excessive delay and costs to the parties. The parties and the arbitrator shall use all reasonable efforts to complete the arbitration within six months of the effective date of the demand for arbitration or, when applicable, the service of the list of defects in accordance with RCW 64.50.030;

(5) Except as otherwise set forth in this section, arbitration shall be conducted under \*chapter 7.04 RCW, unless the parties elect to use the construction industry arbitration rules of the American arbitration association, which are permitted to the extent not inconsistent with this section. The expenses of witnesses including expert witnesses shall be paid by the party producing the witnesses. All other expenses of arbitration shall be borne equally by the parties, unless all parties agree otherwise or unless the arbitrator awards expenses or any part thereof to any specified party or parties. The parties shall pay the fees of the arbitrator as and when specified by the arbitrator;

(6) Demand for arbitration given pursuant to subsection (1) of this section commences a judicial proceeding for purposes of RCW 64.34.452;

(7) The arbitration decision shall be in writing and must set forth findings of fact and conclusions of law that support the decision. [2004 c 201 § 1601.]

\*Reviser's note: Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006.

**Chapter 64.36 RCW  
TIMESHARE REGULATION**

Sections

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64.36.340	Uniform regulation of business and professions act.
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64.36.900	Short title.

**64.36.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

(4) "Director" means the director of licensing.

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal

or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

**64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties.** (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 289; 1983 1st ex.s. c 22 § 2.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**64.36.025 Timeshare interest reservation—Definition—Registration required—Promoter's obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion.** (1) For the purpose of this section, "timeshare interest reservation" means a revocable right to purchase an interest in a timeshare project for which construction has not yet been completed and an effective registration has been obtained under this chapter.

(2) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest reservation. Promoters offering a timeshare interest reservation under this section must provide the registered disclosure document required by RCW 64.36.140 to each prospective purchaser before he or she enters into a timeshare interest reservation. Prior to the signing of a purchase agreement, the subject property or properties must be completed, the timeshare offering registration required by RCW 64.36.020 must be amended to reflect any changes to the property and must be reapproved by the department, the disclosure document required by RCW 64.36.140 must be revised, and the new version of the disclosure document must be provided to the prospective purchaser.

(3) Deposits accepted by promoters on a timeshare interest reservation may be no more than twenty percent of the total purchase price of the timeshare interest that is being purchased. Within one business day after being accepted by the promoter, any deposit on a timeshare interest reservation shall be deposited in an account in a federally insured depository located in the state of Washington. This account must be an escrow account wherein the deposited funds are held for the benefit of the purchaser. The department may request that deposits be placed in impoundment under RCW 64.36.130.

(4) In addition to the cancellation rights provided in RCW 64.36.150, the purchaser has the right to cancel the purchase at any time before the signing of a purchase agreement. If the purchaser notifies the promoter that he or she wishes to cancel the timeshare interest reservation, the promoter must refund the full amount of the deposit minus any account fees within ten days of the notice.

(5) If prior to signing a purchase agreement the purchaser learns that the promoter proposes to raise the purchase price above the price agreed to in the written reservation agreement for the timeshare interest reservation, the written reservation agreement is void and all deposit moneys including account fees shall be returned to the purchaser within ten days after the purchaser learns of the proposed price increase.

(6) If the promoter charges account fees to pay for administrative costs of holding the purchaser's funds in escrow, these fees may be no more than one percent of the

total deposit paid towards the timeshare interest reservation by the purchaser.

(7) The promoter shall provide instructions to the escrow company for release of the funds to be held in escrow in compliance with this section and rules of the department.

(8) The purchaser's right to cancel and the amount of the deposit proposed to be retained for account fees in the event of cancellation must be included in the contract for the sale of a timeshare interest reservation and the contract must state:

#### PURCHASER CANCELLATION RIGHTS

As a purchaser of a timeshare interest reservation, you have the right to cancel this timeshare interest reservation and receive a refund of all consideration paid (less only those account fee deductions which were fully disclosed at the time of the agreement) by providing written notice of the cancellation to the promoter or the promoter's agent at any time prior to signing a purchase agreement. You also have a right to cancel your purchase within seven days of signing a purchase agreement.

(9) If it appears that the timeshare project will become or does become insolvent prior to completion, the promoter shall instruct the escrow company to immediately return all deposits to purchasers of timeshare interest reservations. If funds are returned under this subsection, the promoter may not retain any portion of the deposits for account fees. [2002 c 226 § 2.]

#### **64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights.**

(1) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest. A promoter who offers to sell or sells revocable timeshare interests in incomplete projects or facilities is limited by and must comply with all of the requirements of RCW 64.36.025. If a promoter seeks to enter into irrevocable purchase agreements with purchasers for timeshare interests in incomplete projects or facilities, the promoter must meet the requirements in this section in addition to RCW 64.36.020 and the following limitations and conditions apply:

(a) The promoter is limited to offering or selling only fee simple deeded timeshare interests;

(b) Construction on the project must have begun by the time the irrevocable purchase agreement is signed and the purchaser must have the right to occupy the unit and use all contracted for amenities no later than within two years of the date that the irrevocable purchase agreement is signed;

(c) The promoter must establish an independent third-party escrow account for the purpose of protecting the funds or other property paid, pledged, or deposited by purchasers;

(d) The promoter's solicitations, advertisements, and promotional materials must clearly and conspicuously disclose that "THE PROJECT IS NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

(e) The promoter's solicitations, advertisements, and promotional materials and the timeshare interest purchase agreement must clearly and conspicuously provide for and disclose the last possible estimated date for completion of construction of any building the promoter is contractually obligated to the purchaser to complete.

(2) The timeshare interest purchase agreement must contain the following language in fourteen-point bold face type: "If the building in which the timeshare interest is located and all contracted for amenities are not completed by [estimated date of completion], the purchaser has the right to void the purchase agreement and is entitled to a full, unqualified refund of all moneys paid."

(3) One hundred percent of all funds or other property that is received from or on behalf of purchasers of timeshare interests prior to the occurrence of events required in this section must be deposited pursuant to a third-party escrow agreement approved by the director. For purposes of this section, "purchasers" includes all persons solicited, offered, or who purchased a timeshare interest by a promoter within the state of Washington. An escrow agent shall maintain the account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent has a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. If the escrow agent receives conflicting demands for funds or property held in escrow, the escrow agent shall immediately notify the department of licensing of the dispute and the department shall determine if and how the funds should be distributed. If the purchaser, promoter, or escrow agent disagrees with the department's determination, the parties have the right to request an administrative hearing under chapter 34.05 RCW. Funds may be released from the escrow account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur:

(a) The purchaser's cancellation period has expired;

(b) Closing has occurred; and

(c) Construction is complete and the building is ready to occupy.

(4) In lieu of depositing purchaser funds into an escrow account, the promoter may post with the department a bond in an amount equal to or greater than the amount that would otherwise be required to be placed into the escrow account.

(5) Any purchaser has the right to void the timeshare purchase agreement and request a full, unqualified refund if construction of the building in which the timeshare interest is located or all contracted for amenities are not completed within two years from the date that the irrevocable purchase agreement is signed or by the last estimated date of construction contained in the irrevocable purchase agreement, whichever is earlier.

(6) If the completed timeshare building or contracted for amenities are materially and adversely different from the building or amenities that were promised to purchasers at the time that the purchase agreements were signed, the director may declare any or all of the purchaser contracts void. Before declaring the contracts void, the director shall give the promoter the opportunity for a hearing in accordance with chapters 34.05 and 18.235 RCW.

(7) If the promoter intends to or does pledge or borrow against funds or properties, that are held in escrow or protected by a bond, to help finance in whole or in part the construction of the timeshare project or to help pay for operating costs, this must be fully, plainly, and conspicuously disclosed

in all written advertising, in all written solicitations for the sale of the timeshare interests, in the registration with the director, and in the purchase agreement or contract.

(8) A promoter who obtains an effective registration for a revocable timeshare interest reservation must meet the requirements of this section in order to complete an irrevocable purchase agreement. [2003 c 348 § 1.]

**64.36.030 Application for registration—Contents.**

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

(1) The following financial statements showing the financial condition of the promoter and any affiliate:

(a) A balance sheet as of a date within four months before the filing of the application for registration; and

(b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;

(2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;

(4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;

(5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;

(7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(8) Copies of all timeshare instruments; and

(9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

**64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited.**

(1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney-in-fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the pro-

moter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this section shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

**64.36.040 Application for registration—When effective.**

If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a complete registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [2002 c 86 § 297; 1983 1st ex.s. c 22 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties.** (1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

**64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information.** (1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

(a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

**64.36.070 Registration as timeshare salesperson required—Exemption.** Any individual offering timeshare units or timeshare interest reservations for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [2002 c 226 § 1; 1983 1st ex.s. c 22 § 8.]

**64.36.081 Fees.** (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

(d) Processing annual or periodic renewals;

(e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;

(f) The review of advertising or promotional materials;

(g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;

(h) Registrations and renewal of registrations of salespersons;

(i) The transfer of salespersons' permits to other promoters;

(j) Administering and processing examinations for salespersons;

(k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

**64.36.085 Inspections of projects—Identification of inspectors.** (1) The director may require inspections of projects registered under this chapter and promoters and their agents shall cooperate by permitting staff of the department to conduct the inspections.

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(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

**64.36.090 Disciplinary action against a timeshare salesperson's application, registration, or license—Unprofessional conduct.** The director may take disciplinary action against a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the applicant or registrant has committed unprofessional conduct as described in RCW 18.235.130. In addition, the director may take disciplinary action if the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect;

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

(4) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(5) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(6) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter. [2002 c 86 § 298; 1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.100 Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions.** The director may deny or take disciplinary action against any timeshare application or registration if the director finds that the applicant or registrant has engaged in unprofessional conduct as described in RCW 18.235.130. In addition, the director may deny or take disciplinary action based on the following conduct, acts, or conditions:

(1) The application, written disclosure, or registration is incomplete;

(2) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

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(3) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(4) The protections and security arrangements to ensure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers; or

(5) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter. [2002 c 86 § 299; 1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser.** A promoter shall not sell, lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

**64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void.** (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

**64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc.** (1) The director may by rule require as a condition of registration under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with title insurance: PROVIDED, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

**64.36.140 Disclosure document—Contents.** Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the pro-

spective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for changes; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare own-

ers of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

**64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement.** The promoter or any person offering timeshare interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

**64.36.160 Application of liability provisions.** No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

**64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW.** Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

**64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing.** (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

**64.36.195 Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct.** The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall con-

stitute unprofessional conduct for which disciplinary action may be taken under RCW 18.235.110 and 18.235.130. [2002 c 86 § 300; 1987 c 370 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.200 Cease and desist order—Notification—Hearing.** (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after service of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing, the order shall become final.

(4) Unlicensed timeshare activity is subject to RCW 18.235.150. [2002 c 86 § 301; 1983 1st ex.s. c 22 § 19.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.210 Unlawful acts—Penalties.** (1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(a) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 290; 1983 1st ex.s. c 22 § 20.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Penalties—Appointment of receiver or conservator.** (1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Proceedings for injunctions for unlicensed timeshare activity must be conducted under the provisions of RCW 18.235.150. [2002 c 86 § 302; 1983 1st ex.s. c 22 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.225 Liability of registrant or applicant for costs of proceedings.** A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the business and professions account created in RCW 43.24.150, all administrative and legal costs, including attorneys' fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [2005 c 25 § 4; 1987 c 370 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.240 Liability for violation of chapter.** Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

**64.36.250 Appointment of director to receive service—Requirements for effective service.** Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

**64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful.** Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

**64.36.270 Rules, forms, and orders—Interpretive opinions.** The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

**64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises.** (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

**64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited.** (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

**64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action.** (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, with-



out first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

**64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list.** (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

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(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the timeshare. Wilful use of a membership list for commercial purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

**64.36.340 Uniform regulation of business and professions act.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 304.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.350 Military training or experience.** An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 20.]

**64.36.351 Spouses of military personnel—Registration.** The director shall develop rules consistent with RCW 18.340.020 for the registration of spouses of military personnel. [2011 2nd sp.s. c 5 § 9.]

**Implementation—2011 2nd sp.s. c 5:** See note following RCW 18.340.010.

**64.36.900 Short title.** This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

## Chapter 64.38 RCW HOMEOWNERS' ASSOCIATIONS

### Sections

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*Speed enforcement: RCW 46.61.419.*

**64.38.005 Intent.** The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

**64.38.010 Definitions.** For purposes of this chapter:

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

(2) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.38.065.

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

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

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

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

(7) "Effective age" means the difference between the estimated useful life and remaining useful life.

(8) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.38.065, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

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

(10) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this

chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

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

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

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

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

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

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

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

(18) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

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

(20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur. [2011 c 189 § 7; 1995 c 283 § 2.]

**Reviser's note:** \*(1) The references to RCW 64.34.380 and 64.34.382 appear to be erroneous. References to RCW 64.38.065 and 64.38.070, respectively, were apparently intended.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.38.015 Association membership.** The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

**64.38.020 Association powers.** Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws, rules, and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(7) Cause additional improvements to be made as a part of the common areas;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

*Speed enforcement: RCW 46.61.419.*

**64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board.** (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

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

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than

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fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

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

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

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

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

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

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

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

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

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [2011 c 189 § 8; 1995 c 283 § 5.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.38.028 Removal of discriminatory provisions in governing documents—Procedure.** (1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race,

creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227, any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through

(3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227. [2006 c 58 § 2.]

**Finding—Intent—2006 c 58:** "The legislature finds that some homeowners' associations have governing documents that contain discriminatory covenants, conditions, or restrictions that are void and unenforceable under both the federal fair housing amendments act of 1988 and RCW 49.60.224. The continued existence of these discriminatory covenants, conditions, or restrictions is contrary to public policy and repugnant to many property owners. It is the intent of chapter 58, Laws of 2006 to allow homeowners' associations to remove all remnants of discrimination from their governing documents." [2006 c 58 § 1.]

**64.38.030 Association bylaws.** Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

**64.38.033 Flag of the United States—Outdoor display—Governing documents.** (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora,

or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 § 1.]

**64.38.034 Political yard signs—Governing documents.** (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 § 1.]

**64.38.035 Association meetings—Notice—Board of directors.** (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. The association must make available to each owner of record for examination and copying minutes from the previous association meeting not more than sixty days after the meeting. Minutes of the previous association meeting must be approved at the next association meeting in accordance with the association's governing documents.

(2) Not less than fourteen nor more than sixty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall provide written notice to each owner of record by:

(a) Hand-delivery to the mailing address of the owner or other address designated in writing by the owner;

(b) Prepaid first-class United States mail to the mailing address of the owner or to any other mailing address designated in writing by the owner; or

(c) Electronic transmission to an address, location, or system designated in writing by the owner. Notice to owners by an electronic transmission complies with this section only with respect to those owners who have delivered to the secretary or other officers specified in the bylaws a written record consenting to receive electronically transmitted notices. An owner who has consented to receipt of electronically transmitted notices may revoke the consent at any time by delivering a written record of the revocation to the secretary or other officer specified in the bylaws. Consent is deemed revoked if the secretary or other officer specified in the bylaws is unable to electronically transmit two consecutive notices given in accordance with the consent.

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(4) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [2014 c 20 § 1; 2013 c 108 § 1; 1995 c 283 § 7.]

**64.38.040 Quorum for meeting.** Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

**64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.** (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

**64.38.050 Violation—Remedy—Attorneys' fees.** Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

**64.38.055 Governing documents—Solar panels.** (1) The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

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

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

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

(2) The governing documents may:

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

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

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

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

(c) Require:

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

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

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

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

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

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on July 26, 2009. A provision in a governing document in effect on July 26, 2009, that is inconsistent with this section is void and unenforceable. [2009 c 51 § 1.]

**64.38.060 Adult family homes.** (1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW; or

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on July 26, 2009. Any provision in a governing document in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 4.]

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

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

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

(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The

decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2011 c 189 § 9.]

**Effective date—2011 c 189:** "This act takes effect January 1, 2012." [2011 c 189 § 15.]

**64.38.070 Reserve study—Requirements.** (1) A reserve study as described in RCW 64.38.065 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

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

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

(c) The following level of reserve study performed:

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

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

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

(d) The association's reserve account balance;

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

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and baseline funding plan;

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

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

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

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assess-

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ment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component." [2011 c 189 § 10.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.38.075 Reserve account—Withdrawals.** An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section. [2011 c 189 § 11.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

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

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

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter. [2011 c 189 § 12.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.38.085 Reserve account and study—Liability.** Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its

officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter. [2011 c 189 § 13.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

**64.38.090 Reserve study—Exemptions.** An association is not required to follow the reserve study requirements under RCW 64.38.025 and RCW 64.38.065 through 64.38.085 if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association. [2011 c 189 § 14.]

**Effective date—2011 c 189:** See note following RCW 64.38.065.

### Chapter 64.40 RCW

#### PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

##### Sections

64.40.010	Definitions—Defense in action for damages.
64.40.020	Applicant for permit—Actions for damages from governmental actions.
64.40.030	Commencement of action—Time limitation.
64.40.040	Remedies cumulative.

**64.40.010 Definitions—Defense in action for damages.** As used in this chapter, the terms in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application

for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

**64.40.020 Applicant for permit—Actions for damages from governmental actions.** (1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

**Findings—Recommendations—Reports encouraged—2007 c 231:** See note following RCW 43.155.070.

**64.40.030 Commencement of action—Time limitation.** Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

**64.40.040 Remedies cumulative.** The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

### Chapter 64.44 RCW

#### CONTAMINATED PROPERTIES

##### Sections

64.44.005	Legislative finding.
64.44.010	Definitions.
64.44.020	Reporting—Warning—Notice—Duties of local health officer.
64.44.030	Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order.
64.44.040	Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited.
64.44.050	Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.
64.44.060	Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees.
64.44.070	Rules and standards—Chapter administration, property decontamination.
64.44.075	Annual evaluation and inspection of decontamination projects.
64.44.080	Civil liability—Immunity.
64.44.900	Application—Other remedies.



**64.44.005 Legislative finding.** The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

**64.44.010 Definitions.** The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Department" means the department of health.

(4) "Hazardous chemicals" means the following substances associated with the illegal manufacture of controlled substances: (a) Hazardous substances as defined in RCW 70.105D.020; (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans; and (c) the controlled substance or substances being manufactured, as defined in RCW 69.50.101.

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(6) "Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection. [2013 c 19 § 49; 2006 c 339 § 201; 1999 c 292 § 2; 1990 c 213 § 2.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.44.020 Reporting—Warning—Notice—Duties of local health officer.** Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning posting for any prop-

erty that includes a hotel or motel holding a current license under RCW 70.62.220, shall be limited to inside the room or on the door of the contaminated room and no written warning posting shall be posted in the lobby of the facility. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If the property is contaminated, the local health officer shall post a written notice declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

If access to the property is denied, a local health officer in consultation with law enforcement may seek a warrant for the purpose of conducting administrative inspections. A superior, district, or municipal court within the jurisdiction of the property may, based upon probable cause that the property is contaminated, issue warrants for the purpose of conducting administrative inspections.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter.

The local health officer may determine when the services of an authorized contractor are necessary. [2006 c 339 § 202; 1999 c 292 § 3; 1990 c 213 § 3.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.030 Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order.** (1) If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each per-

son at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, where the order pertains to real property, and such filing of the complaint or order shall have the same force and effect as other *lis pendens* notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW.

(2) If the local health officer determines immediate action is necessary to protect public health, safety, or the environment, the officer may issue or cause to be issued an emergency order, and any person to whom such an order is directed shall comply immediately. Emergency orders issued pursuant to this section shall expire no later than seventy-two hours after issuance and shall not impair the health officer from seeking an order under subsection (1) of this section. [2006 c 339 § 203; 1999 c 292 § 4; 1990 c 213 § 4.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.040 Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited.** (1) Upon issuance of an order declaring property unfit and prohibiting its use, the city or county in which the contaminated property is located may take action to prohibit use, occupancy, or removal of such property; condemn, decontaminate, or demolish the property; or require that the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. The city, county, or contractor shall comply with all orders of the health officer during these processes. No city or county may condemn, decontaminate, or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, but may prohibit use, occupancy, or removal of contaminated property pending appeal of the order.

(2)(a) It is unlawful for any person to enter upon any property, or to remove any property, that has been found unfit for use by a local health officer pursuant to RCW 64.44.030.

(b) This subsection does not apply to: (i) Health officials, law enforcement officials, or other government agents performing their official duties; (ii) authorized contractors or owners performing decontamination pursuant to authorization by the local health officer; and (iii) any person acting with permission of a local health officer, or of a superior court or hearing examiner following an appeal of a decision of the local health officer.

(c) Any person who violates this subsection is guilty of a misdemeanor.

(3) No provision of this section may be construed to limit the ability of the local health officer to permit occupants or owners of the property at issue to remove uncontaminated personal property from the premises. [2006 c 339 § 204; 1999 c 292 § 5; 1990 c 213 § 5.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.050 Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.** (1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.310, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all

procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decontaminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.310 whose sole basis of ownership is a bona fide security interest is responsible for costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by sub-

mitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless of when received. [2011 c 171 § 106; 2008 c 201 § 1; 2006 c 339 § 205; 1999 c 292 § 6; 1990 c 213 § 6.]

**Intent—Effective date—2011 c 171:** See notes following RCW 4.24.210.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees.** (1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or rein-

statement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses. [2013 c 251 § 6; 2006 c 339 § 206; 1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Residual balance of funds—Effective date—2013 c 251:** See notes following RCW 41.06.280.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.44.070 Rules and standards—Chapter administration, property decontamination.** (1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department may provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as a laboratory for the production of controlled substances and methods for the testing of porous and nonporous surfaces, groundwater, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. [2009 c 495 § 7; 2006 c 339 § 207; 1999 c 292 § 8; 1990 c 213 § 9.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.075 Annual evaluation and inspection of decontamination projects.** The department may evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060 (4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected. [2006 c 339 § 208.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**64.44.080 Civil liability—Immunity.** Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

**64.44.900 Application—Other remedies.** This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

## Chapter 64.50 RCW

### CONSTRUCTION DEFECT CLAIMS

#### Sections

64.50.005	Finding—Intent.
64.50.010	Definitions.
64.50.020	Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action.
64.50.030	List of known construction defects—Requirements—Time limits.
64.50.040	Construction defect action brought by a board of directors—Notice.
64.50.050	Construction professional right to offer to cure defects—Notice to homeowner.
64.50.060	Interpretation of chapter regarding certain relationships and rights.

**64.50.005 Finding—Intent.** The legislature finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the legislature that this chapter apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions. [2002 c 323 § 1.]

**64.50.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleg-

ing personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and \*64.38.010(1).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in \*\*RCW 64.34.020(12) and a declarant as defined in \*\*RCW 64.34.020(13), performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) "Homeowner" means: (a) Any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and (b) an "association" as defined in this section. "Homeowner" includes, but is not limited to, a subsequent purchaser of a residence from any homeowner.

(6) "Residence" means a single-family house, duplex, triplex, quadplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common elements as defined in \*\*\*RCW 64.34.020(6) and common areas as defined in RCW 64.38.010(4).

(7) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(8) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made. [2002 c 323 § 2.]

**Reviser's note:** \*(1) RCW 64.38.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (11), effective January 1, 2012.

\*\* (2) RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsections (12) and (13) to subsections (13) and (14), respectively. RCW 64.34.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (13) and (14) to subsections (14) and (15), respectively, effective January 1, 2012.

\*\*\* (3) RCW 64.34.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6) to subsection (7), effective January 1, 2012.

**64.50.020 Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action.** (1) In every construction defect action brought against a construction professional, the claimant shall, no later than forty-five days before filing an action, serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(2) Within twenty-one days after service of the notice of claim, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subsection (2)(b) to compromise and settle a homeowner's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim, and to pay the claimant's reasonable relocation costs; or

(c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3)(a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4)(a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5)(a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

(6) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced until the claimant has complied with the requirements of this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (6) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added

to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section. [2002 c 323 § 3.]

**64.50.030 List of known construction defects—Requirements—Time limits.** (1) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, shall file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(2) The list of known construction defects shall contain a description of the construction that the claimant alleges to be defective. The list of known construction defects shall be filed with the court and served on the defendant within thirty days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(4) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(5) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against such subcontractor or supplier shall serve on the subcontractor or supplier the list of construction defects in accordance with this section within thirty days after service of the complaint against the subcontractor or supplier or within such period as the court in its discretion may allow. [2002 c 323 § 4.]

**64.50.040 Construction defect action brought by a board of directors—Notice.** (1)(a) In the event the board of directors, pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting defects in the construction of two or more residences, common elements, or common areas, this section shall apply. For purposes of this section, "action" has the same meaning as set forth in RCW 64.50.010.

(b) The board of directors shall substantially comply with the provisions of this section.

(2)(a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the board of directors shall mail or deliver written notice of the commencement or anticipated commencement of such action to each homeowner at the last known address described in the association's records.

(b) The notice required by (a) of this subsection shall state a general description of the following:

- (i) The nature of the action and the relief sought; and
- (ii) The expenses and fees that the board of directors anticipates will be incurred in prosecuting the action.

(3) Nothing in this section may be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the board of directors to contract for legal services, or limit or impair the ability to enforce such a contract for legal services. [2002 c 323 § 5.]

**64.50.050 Construction professional right to offer to cure defects—Notice to homeowner.** (1) The construction professional shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence, of the construction professional's right to offer to cure construction defects before a homeowner may commence litigation against the construction professional. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the requirement for delivery of such notice shall be deemed satisfied if contained in a public offering statement delivered in accordance with chapter 64.34 RCW.

(2) The notice required by this subsection shall be in substantially the following form:

CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(3) This chapter shall not preclude or bar any action if notice is not given to the homeowner as required by this section. [2002 c 323 § 6.]

**64.50.060 Interpretation of chapter regarding certain relationships and rights.** Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract. [2002 c 323 § 7.]

### Chapter 64.55 RCW

#### CONSTRUCTION DEFECT DISPUTES— MULTIUNIT RESIDENTIAL BUILDINGS

##### Sections

64.55.005 Application.

(2016 Ed.)

64.55.010	Definitions.
64.55.020	Building permit application—Submission of design documents.
64.55.030	Inspection required.
64.55.040	Inspectors—Qualifications.
64.55.050	Scope of inspection—Definition.
64.55.060	Certification—Certificate of occupancy.
64.55.070	Inspector, architect, and engineer—No private right of action or basis for liability against.
64.55.080	Inspector's report or testimony—No evidentiary presumption—Admissibility.
64.55.090	Sale of condominium unit subject to compliance—Inspection alternative.
64.55.100	Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.
64.55.110	Case schedule plan—Deadlines.
64.55.120	Mandatory mediation.
64.55.130	Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.
64.55.140	Payment of arbitrators, mediators, and neutral experts.
64.55.150	Subcontractors and suppliers—When party to arbitration.
64.55.160	Offers of judgment—Costs and fees.
64.55.901	Effective date—2005 c 456.

**64.55.005 Application.** (1)(a) RCW 64.55.010 through 64.55.090 apply to any multiunit residential building for which the permit for construction or rehabilitative construction of such building was issued on or after August 1, 2005.

(b) RCW 64.55.010 and 64.55.090 apply to conversion condominiums as defined in RCW 64.34.020, provided that RCW 64.55.090 shall not apply to a condominium conversion for which a public offering statement had been delivered pursuant to chapter 64.34 RCW prior to August 1, 2005.

(2) RCW 64.55.010 and 64.55.100 through 64.55.160 and 64.34.415 apply to any action that alleges breach of an implied or express warranty under chapter 64.34 RCW or that seeks relief that could be awarded for such breach, regardless of the legal theory pled, except that RCW 64.55.100 through 64.55.160 and 64.34.415 shall not apply to:

(a) Actions filed or served prior to August 1, 2005;

(b) Actions for which a notice of claim was served pursuant to chapter 64.50 RCW prior to August 1, 2005;

(c) Actions asserting any claim regarding a building that is not a multiunit residential building;

(d) Actions asserting any claim regarding a multiunit residential building that was permitted on or after August 1, 2005, unless the letter required by RCW 64.55.060 has been submitted to the appropriate building department or the requirements of RCW 64.55.090 have been satisfied.

(3) Other than the requirements imposed by RCW 64.55.010 through 64.55.090, nothing in this chapter amends or modifies the provisions of RCW 64.34.050. [2005 c 456 § 1.]

**64.55.010 Definitions.** Unless the context clearly requires otherwise, the definitions in RCW 64.34.020 and in this section apply throughout this chapter.

(1) "Attached dwelling unit" means any dwelling unit that is attached to another dwelling unit by a wall, floor, or ceiling that separates heated living spaces. A garage is not a heated living space.

(2) "Building enclosure" means that part of any building, above or below grade, that physically separates the outside or exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion. Interior environments consist of both heated and unheated

enclosed spaces. The building enclosure includes, but is not limited to, that portion of roofs, walls, balcony support columns, decks, windows, doors, vents, and other penetrations through exterior walls, which waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion.

(3) "Building enclosure design documents" means plans, details, and specifications for the building enclosure that have been stamped by a licensed engineer or architect. The building enclosure design documents shall include details and specifications that are appropriate for the building in the professional judgment of the architect or engineer which prepared the same to waterproof, weatherproof, and otherwise protect the building or its components from water or moisture intrusion, including details of flashing, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane, and details around openings.

(4) "Developer" means:

(a) With respect to a condominium or a conversion condominium, the declarant; and

(b) With respect to all other buildings, an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other entity or person that obtains a building permit for the construction or rehabilitative reconstruction of a multiunit residential building. If a permit is obtained by service providers such as architects, contractors, and consultants who obtain permits for others as part of services rendered for a fee, the person for whom the permit is obtained shall be the developer, not the service provider.

(5) "Dwelling unit" has the meaning given to that phrase or similar phrases in the ordinances of the jurisdiction issuing the permit for construction of the building enclosure but if such ordinances do not provide a definition, then "dwelling unit" means a residence containing living, cooking, sleeping, and sanitary facilities.

(6) "Multiunit residential building" means:

(a) A building containing more than two attached dwelling units, including a building containing nonresidential units if the building also contains more than two attached dwelling units, but excluding the following classes of buildings:

(i) Hotels and motels;

(ii) Dormitories;

(iii) Care facilities;

(iv) Floating homes;

(v) A building that contains attached dwelling units that are each located on a single platted lot, except as provided in (b) of this subsection;

(vi) A building in which all of the dwelling units are held under one ownership and is subject to a recorded irrevocable sale prohibition covenant.

(b) If the developer submits to the appropriate building department when applying for the building permit described in RCW 64.55.020 a statement that the developer elects to treat the improvement for which a permit is sought as a multiunit residential building for all purposes under this chapter, then "multiunit residential building" also means the following buildings for which such election has been made:

(i) A building containing only two attached dwelling units;

(ii) A building that does not contain attached dwelling units; and

(iii) Any building that contains attached dwelling units each of which is located on a single platted lot.

(7) "Party unit owner" means a unit owner who is a named party to an action subject to this chapter and does not include any unit owners whose involvement with the action stems solely from their membership in the association.

(8) "Qualified building inspector" means a person satisfying the requirements of RCW 64.55.040.

(9) "Rehabilitative construction" means construction work on the building enclosure of a multiunit residential building if the cost of such construction work is more than five percent of the assessed value of the building.

(10) "Sale prohibition covenant" means a recorded covenant that prohibits the sale or other disposition of individual dwelling units as or as part of a condominium for five years or more from the date of first occupancy except as otherwise provided in RCW 64.55.090, a certified copy of which the developer shall submit to the appropriate building department; provided such covenant shall not apply to sales or dispositions listed in RCW 64.34.400(2). The covenant must be recorded in the county in which the building is located and must be in substantially the following form:

This covenant has been recorded in the real property records of . . . . County, Washington, in satisfaction of the requirements of RCW 64.55.010 through 64.55.090. The undersigned is the owner of the property described on Exhibit A (the "Property"). Until termination of this covenant, no dwelling unit in or on the Property may be sold as a condominium unit except for sales listed in RCW 64.34.400(2).

This covenant terminates on the earlier of either: (a) Compliance with the requirements of RCW 64.55.090, as certified by the owner of the Property in a recorded supplement hereto; or (b) the fifth anniversary of the date of first occupancy of a dwelling unit as certified by the Owner in a recorded supplement hereto.

All title insurance companies and persons acquiring an interest in the Property may rely on the forgoing certifications without further inquiry in issuing any policy of title insurance or in acquiring an interest in the Property.

(11) "Stamped" means bearing the stamp and signature of the responsible licensed architect or engineer on the title page, and on every sheet of the documents, drawings, or specifications, including modifications to the documents, drawings, and specifications that become part of change orders or addenda to alter those documents, drawings, or specifications. [2005 c 456 § 2.]

**64.55.020 Building permit application—Submission of design documents.** (1) Any person applying for a building permit for construction of a multiunit residential building or rehabilitative construction shall submit building enclosure design documents to the appropriate building department prior to the start of construction or rehabilitative construction of the building enclosure. If construction work on a building enclosure is not rehabilitative construction because the cost



thereof is not more than five percent of the assessed value of the building, then the person applying for a building permit shall submit to the building department a letter so certifying. Any changes to the building enclosure design documents that alter the manner in which the building or its components is waterproofed, weatherproofed, and otherwise protected from water or moisture intrusion shall be stamped by the architect or engineer and shall be provided to the building department and to the person conducting the course of construction inspection in a timely manner to permit such person to inspect for compliance therewith, and may be provided through individual updates, cumulative updates, or as-built updates.

(2) The building department shall not issue a building permit for construction of the building enclosure of a multiunit residential building or for rehabilitative construction unless the building enclosure design documents contain a stamped statement by the person stamping the building enclosure design documents in substantially the following form: "The undersigned has provided building enclosure documents that in my professional judgment are appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090."

(3) The building department is not charged with determining whether the building enclosure design documents are adequate or appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090. Nothing in RCW 64.55.005 through 64.55.090 requires a building department to review, approve, or disapprove enclosure design documents. [2005 c 456 § 3.]

**64.55.030 Inspection required.** All multiunit residential buildings shall have the building enclosure inspected by a qualified inspector during the course of initial construction and during rehabilitative construction. [2005 c 456 § 4.]

**64.55.040 Inspectors—Qualifications.** (1) A qualified building enclosure inspector:

(a) Must be a person with substantial and verifiable training and experience in building enclosure design and construction;

(b) Shall be free from improper interference or influence relating to the inspections; and

(c) May not be an employee, officer, or director of, nor have any pecuniary interest in, the declarant, developer, association, or any party providing services or materials for the project, or any of their respective affiliates, except that the qualified inspector may be the architect or engineer who approved the building enclosure design documents or the architect or engineer of record. The qualified inspector may, but is not required to, assist with the preparation of such design documents.

(2) Nothing in this section alters requirements for licensure of any architect, engineer, or other professional, or alters the jurisdiction, authority, or scope of practice of architects, engineers, other professionals, or general contractors. [2005 c 456 § 5.]

**64.55.050 Scope of inspection—Definition.** (1) Any inspection required by this chapter shall include, at a minimum, the following:

(2016 Ed.)

(a) Water penetration resistance testing of a representative sample of windows and window installations. Such tests shall be conducted according to industry standards. Where appropriate, tests shall be conducted with an induced air pressure difference across the window and window installation. Additional testing is not required if the same assembly has previously been tested in situ within the previous two years in the project under construction by the builder, by another member of the construction team such as an architect or engineer, or by an independent testing laboratory; and

(b) An independent periodic review of the building enclosure during the course of construction or rehabilitative construction to ascertain whether the multiunit residential building has been constructed, or the rehabilitative construction has been performed, in substantial compliance with the building enclosure design documents.

(2) Subsection (1)(a) of this section shall not apply to rehabilitative construction if the windows and adjacent cladding are not altered in the rehabilitative construction.

(3) "Project" means one or more parcels of land in a single ownership, which are under development pursuant to a single land use approval or building permit, where window installation is performed by the owner with its own forces, or by the same general contractor, or, if the owner is contracting directly with trade contractors, is performed by the same trade contractor. [2005 c 456 § 6.]

**64.55.060 Certification—Certificate of occupancy.** Upon completion of an inspection required by this chapter, the qualified inspector shall prepare and submit to the appropriate building department a signed letter certifying that the building enclosure has been inspected during the course of construction or rehabilitative construction and that it has been constructed or reconstructed in substantial compliance with the building enclosure design documents, as updated pursuant to RCW 64.55.020. The building department shall not issue a final certificate of occupancy or other equivalent final acceptance until the letter required by this section has been submitted. The building department is not charged with and has no responsibility for determining whether the building enclosure inspection is adequate or appropriate to satisfy the requirements of this chapter. [2005 c 456 § 7.]

**64.55.070 Inspector, architect, and engineer—No private right of action or basis for liability against.** (1) Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) is intended to, or does:

(a) Create a private right of action against any inspector, architect, or engineer based upon compliance or noncompliance with its provisions; or

(b) Create any independent basis for liability against an inspector, architect, or engineer.

(2) The qualified inspector, architect, or engineer and the developer that retained the inspector, architect, or engineer may contractually agree to the amount of their liability to the developer. [2005 c 456 § 8.]

**64.55.080 Inspector's report or testimony—No evidentiary presumption—Admissibility.** A qualified inspector's report or testimony regarding an inspection conducted

pursuant to this chapter is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter restricts the admissibility of such a report or testimony, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence. [2005 c 456 § 9.]

**64.55.090 Sale of condominium unit subject to compliance—Inspection alternative.** (1) Except for sales or other dispositions listed in RCW 64.34.400(2), no declarant may convey a condominium unit that may be occupied for residential use in a multiunit residential building without first complying with the requirements of RCW 64.55.005 through 64.55.080 unless the building enclosure of the building in which such unit is included is inspected by a qualified building enclosure inspector, and:

(a) The inspection includes such intrusive or other testing, such as the removal of siding or other building enclosure materials, that the inspector believes, in his or her professional judgment, is necessary to ascertain the manner in which the building enclosure was constructed;

(b) The inspection evaluates, to the extent reasonably ascertainable and in the professional judgment of the inspector, the present condition of the building enclosure including whether such condition has adversely affected or will adversely affect the performance of the building enclosure to waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion. "Adversely affect" has the same meaning as provided in RCW 64.34.445(7);

(c) The inspection report includes recommendations for repairs to the building enclosure that, in the professional judgment of the qualified building inspector, are necessary to: (i) Repair a design or construction defect in the building enclosure that results in the failure of the building enclosure to perform its intended function and allows unintended water penetration not caused by flooding; and (ii) repair damage caused by such a defect that has an adverse effect as provided in RCW 64.34.445(7);

(d) With respect to a building that would be a multiunit residential building but for the recording of a sale prohibition covenant and unless more than five years have elapsed since the date such covenant was recorded, all repairs to the building enclosure recommended pursuant to (c) of this subsection have been made; and

(e) The declarant provides as part of the public offering statement, consistent with RCW 64.34.410 (1)(nn) and (2) and 64.34.415(1)(b), an inspection and repair report signed by the qualified building enclosure inspector that identifies:

(i) The extent of the inspection performed pursuant to this section;

(ii) The information obtained as a result of that inspection; and

(iii) The manner in which any repairs required by this section were performed, the scope of those repairs, and the names of the persons performing those repairs.

(2) Failure to deliver the inspection and repair report in violation of this section constitutes a failure to deliver a public offering statement for purposes of chapter 64.34 RCW. [2005 c 456 § 10.]

**64.55.100 Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.** (1) If the declarant, an association, or a party unit owner demands an arbitration by filing such demand with the court not less than thirty and not more than ninety days after filing or service of the complaint, whichever is later, the parties shall participate in a private arbitration hearing. The declarant, the association, and the party unit owner do not have the right to compel arbitration without giving timely notice in compliance with this subsection. Unless otherwise agreed by the parties, the arbitration hearing shall commence no more than fourteen months from the later of the filing or service of the complaint.

(2) Unless otherwise agreed by the parties, claims that in aggregate are for less than one million dollars shall be heard by a single arbitrator and all other claims shall be heard by three arbitrators. As used in this chapter, arbitrator also means arbitrators where applicable.

(3) Unless otherwise agreed by the parties, the court shall appoint the arbitrator, who shall be a current or former attorney with experience as an attorney, judge, arbitrator, or mediator in construction defect disputes involving the application of Washington law.

(4) Upon conclusion of the arbitration hearing, the arbitrator shall file the decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after the filing of the decision and award, any aggrieved party may file with the clerk a written notice of appeal and demand for a trial de novo in the superior court on all claims between the appealing party and an adverse party. As used in this section, "adverse party" means the party who either directly asserted or defended claims against the appealing party. The demand shall identify the adverse party or parties and all claims between those parties shall be included in the trial de novo. The right to a trial de novo includes the right to a jury, if demanded. The court shall give priority to the trial date for the trial de novo.

(5) If the judgment for damages, not including awards of fees and costs, in the trial de novo is not more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, the appealing party shall pay the nonappealing adverse party's costs and fees incurred after the filing of the appeal, including reasonable attorneys' fees so incurred.

(6) If the judgment for damages, not including awards of fees and costs, in the trial de novo is more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, then the court may award costs and fees, including reasonable attorneys' fees, incurred after the filing of the request for trial de novo in accordance with applicable law; provided if such a judgment is not more favorable to the appealing party than the most recent offer of judgment, if any, made pursuant to RCW 64.55.160, the court shall not make an award of fees and costs to the appealing party.

(7) If a party is entitled to an award with respect to the same fees and costs pursuant to this section and RCW 64.55.160, then the party shall only receive an award of fees and costs as provided in and limited by RCW 64.55.160. Any award of fees and costs pursuant to subsections (5) or (6) of this section is subject to review in the event of any appeal

thereof otherwise permitted by applicable law or court rule. [2005 c 456 § 11.]

**64.55.110 Case schedule plan—Deadlines.** (1) Not less than sixty days after the later of filing or service of the complaint, the parties shall confer to create a proposed case schedule plan for submission to the court that includes the following deadlines:

- (a) Selection of a mediator;
- (b) Commencement of the mandatory mediation and submission of mediation materials required by this chapter;
- (c) Selection of the arbitrator by the parties, where applicable;
- (d) Joinder of additional parties in the action;
- (e) Completion of each party's investigation;
- (f) Disclosure of each party's proposed repair plan;
- (g) Disclosure of each party's estimated costs of repair;
- (h) Meeting of parties and experts to confer in accordance with RCW 64.55.120; and
- (i) Disclosure of each party's settlement demand or response.

(2) If the parties agree upon a proposed case schedule plan, they shall move the court for the entry of the proposed case schedule plan. If the parties cannot agree, either party may move the court for entry of a case schedule plan that includes the above deadlines. [2005 c 456 § 12.]

**64.55.120 Mandatory mediation.** (1) The parties to an action subject to this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) shall engage in mediation. Unless the parties agree otherwise, the mediation required by this section shall commence within seven months of the later of the filing or service of the complaint. If the parties cannot agree upon a mediator, the court shall appoint a mediator.

(2) Prior to the mediation required by this section, the parties and their experts shall meet and confer in good faith to attempt to resolve or narrow the scope of the disputed issues, including issues related to the parties' repair plans.

(3) Prior to the mandatory mediation, the parties or their attorneys shall file and serve a declaration that:

- (a) A decision maker with authority to settle will be available for the duration of the mandatory mediation; and
- (b) The decision maker has been provided with and has reviewed the mediation materials provided by the party to which the decision maker is affiliated as well as the materials submitted by the opposing parties.

(4) Completion of the mediation required by this section occurs upon written notice of termination by any party. The provisions of RCW 64.55.160 shall not apply to any later mediation conducted following such notice. [2005 c 456 § 13.]

**64.55.130 Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.**

(1) If, after meeting and conferring as required by RCW 64.55.120(2), disputed issues remain, a party may file a motion with the court, or arbitrator if an arbitrator has been appointed, requesting the appointment of a neutral expert to address any or all of the disputed issues. Unless otherwise agreed to by the parties or upon a showing of exceptional cir-

cumstances, including a material adverse change in a party's litigation risks due to a change in allegations, claims, or defenses by an adverse party following the appointment of the neutral expert, any such motion shall be filed no later than sixty days after the first day of the meeting required by RCW 64.55.120(2). Upon such a request, the court or arbitrator shall decide whether or not to appoint a neutral expert or experts. A party may only request more than one neutral expert if the particular expertise of the additional neutral expert or experts is necessary to address disputed issues.

(2) The neutral expert shall be a licensed architect or engineer, or any other person, with substantial experience relevant to the issue or issues in dispute. The neutral expert shall not have been employed as an expert by a party to the present action within three years before the commencement of the present action, unless the parties agree otherwise.

(3) All parties shall be given an opportunity to recommend neutral experts to the court or arbitrator and shall have input regarding the appointment of a neutral expert.

(4) Unless the parties agree otherwise on the following matters, the court, or arbitrator if then appointed, shall determine:

- (a) Who shall serve as the neutral expert;
- (b) Subject to the requirements of this section, the scope of the neutral expert's duties;
- (c) The number and timing of inspections of the property;
- (d) Coordination of inspection activities with the parties' experts;
- (e) The neutral expert's access to the work product of the parties' experts;
- (f) The product to be prepared by the neutral expert;
- (g) Whether the neutral expert may participate personally in the mediation required by RCW 64.55.120; and
- (h) Other matters relevant to the neutral expert's assignment.

(5) Unless the parties agree otherwise, the neutral expert shall not make findings or render opinions regarding the amount of damages to be awarded, or the cost of repairs, or absent exceptional circumstances any matters that are not in dispute as determined in the meeting described in RCW 64.55.120(2) or otherwise.

(6) A party may, by motion to the court, or to the arbitrator if then appointed, object to the individual appointed to serve as the neutral expert and to determinations regarding the neutral expert's assignment.

(7) The neutral expert shall have no liability to the parties for the performance of his or her duties as the neutral expert.

(8) Except as otherwise agreed by the parties, the parties have a right to review and comment on the neutral expert's report before it is made final.

(9) A neutral expert's report or testimony is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) restricts the admissibility of such a report or testimony, provided it is within the scope of the neutral expert's assigned duties, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence.

(10) The court, or arbitrator if then appointed, shall determine the significance of the neutral expert's report and testimony with respect to parties joined after the neutral expert's appointment and shall determine whether additional neutral experts should be appointed or other measures should be taken to protect such joined parties from undue prejudice. [2005 c 456 § 14.]

**64.55.140 Payment of arbitrators, mediators, and neutral experts.** (1) Where the building permit that authorized commencement of construction of a building was issued on or after August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration shall advance the fees of any arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 shall advance any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Ultimate liability for any fees or costs advanced pursuant to this subsection (1) is subject to the fee- and cost-shifting provisions of RCW 64.55.160.

(2) Where the building permit that authorized commencement of construction of a building was issued before August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration is liable for and shall pay the fees of any appointed arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 is liable for and shall pay any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Fees and costs paid under this subsection (2) are not subject to the fee- and cost-shifting provisions of RCW 64.55.160. [2005 c 456 § 15.]

**64.55.150 Subcontractors and suppliers—When party to arbitration.** Upon the demand of a party to an arbitration demanded under RCW 64.55.100, any subcontractor or supplier against whom such party has a legal claim and whose work or performance on the building in question becomes an issue in the arbitration may be joined in and become a party to the arbitration. However, joinder of such parties shall not be allowed if such joinder would require the arbitration hearing date to be continued beyond the date established pursuant to RCW 64.55.100, unless the existing parties to the arbitration agree otherwise. Nothing in RCW 64.55.010 through 64.55.090 shall be construed to release, modify, or otherwise alleviate the liabilities or responsibilities that any party may have towards any other party, contractor, or subcontractor. [2005 c 456 § 16.]

**64.55.160 Offers of judgment—Costs and fees.** (1)

On or before the sixtieth day following completion of the mediation pursuant to RCW 64.55.120(4), the declarant, association, or party unit owner may serve on an adverse party an offer to allow judgment to be entered. The offer of judgment shall specify the amount of damages, not including costs or fees, that the declarant, association, or party unit owner is offering to pay or receive. A declarant's offer shall also include its commitment to pay costs and fees that may be awarded as provided in this section. The declarant, association, or party unit owner may make more than one offer of judgment so long as each offer is timely made. Each subsequent offer supersedes and replaces the previous offer. Any offer not accepted within twenty-one days of the service of that offer is deemed rejected and withdrawn and evidence thereof is not admissible and may not be provided to the court or arbitrator except in a proceeding to determine costs and fees or as part of the motion identified in subsection (2) of this section.

(2) A declarant's offer must include a demonstration of ability to pay damages, costs, and fees, including reasonable attorneys' fees, within thirty days of acceptance of the offer of judgment. The demonstration of ability to pay shall include a sworn statement signed by the declarant, the attorney representing the declarant, and, if any insurance proceeds will be used to fund any portion of the offer, an authorized representative of the insurance company. If the association or party unit owner disputes the adequacy of the declarant's demonstration of ability to pay, the association or party unit owner may file a motion with the court requesting a ruling on the adequacy of the declarant's demonstration of ability to pay. Upon filing of such motion, the deadline for a response to the offer shall be tolled from the date the motion is filed until the court has ruled.

(3) An association or party unit owner that accepts the declarant's offer of judgment shall be deemed the prevailing party and, in addition to recovery of the amount of the offer, shall be entitled to a costs and fees award, including reasonable attorneys' fees, in an amount to be determined by the court in accordance with applicable law.

(4) If the amount of the final nonappealable or nonappealed judgment, exclusive of costs or fees, is not more favorable to the offeree than the offer of judgment, then the offeror is deemed the prevailing party for purposes of this section only and is entitled to an award of costs and fees, including reasonable attorneys' fees, incurred after the date the last offer of judgment was rejected and through the date of entry of a final nonappealable or nonappealed judgment, in an amount to be determined by the court in accordance with applicable law. The nonprevailing party shall not be entitled to receive any award of costs and fees.

(5) If the final nonappealable or nonappealed judgment on damages, not including costs or fees, is more favorable to the offeree than the last offer of judgment, then the court shall determine which party is the prevailing party and shall determine the amount of the costs and fees award, including reasonable attorneys' fees, in accordance with applicable law.

(6) Notwithstanding any other provision in this section, with respect to claims brought by an association or unit owner, the liability for declarant's costs and fees, including reasonable attorneys' fees, shall:

(a) With respect to claims brought by an association, not exceed five percent of the assessed value of the condominium as a whole, which is determined by the aggregate tax-assessed value of all units at the time of the award; and

(b) With respect to claims brought by a party unit owner, not exceed five percent of the assessed value of the unit at the time of the award. [2005 c 456 § 17.]

**64.55.901 Effective date—2005 c 456.** This act takes effect August 1, 2005. [2005 c 456 § 24.]

### Chapter 64.60 RCW

#### PRIVATE TRANSFER FEE OBLIGATION ACT

##### Sections

64.60.005	Findings.
64.60.010	Definitions.
64.60.020	Private transfer fee obligations—Enforceability—Interpretation.
64.60.030	Liability.
64.60.040	Notice of private transfer fee obligation.
64.60.900	Short title.
64.60.901	Effective date—2011 c 36.

**64.60.005 Findings.** The legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the legislature finds and declares that a private transfer fee obligation may not run with the title to real property, touch or concern the real property, or otherwise bind subsequent owners of real property under any common law or equitable principle. [2011 c 36 § 1.]

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

(1) "Association" means: An association of apartment owners as defined in RCW 64.32.010; a unit owners' association as defined in RCW 64.34.020; a homeowners' association as defined in RCW 64.38.010; a corporation organized pursuant to chapter 24.06 RCW for the purpose of owning real estate under a cooperative ownership plan; or a nonprofit or cooperative membership organization composed exclusively of owners of mobile homes, manufactured housing, timeshares, camping resort interests, or other interests in real property that is responsible for the maintenance, improvements, services, or expenses related to real property that is owned, used, or enjoyed in common by the members.

(2) "Payee" means the person or entity who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation. A payee may or may not have a pecuniary interest in the private transfer fee obligation.

(3) "Private transfer fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for

the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. The following are not private transfer fees for the purposes of this section:

(a) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the real property payable by the grantee based upon any subsequent appreciation, development, or sale of the real property, if such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the real property;

(b) Any commission payable to a licensed real estate broker for services rendered in connection with the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee including, but not limited to, any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest, profit participation, or other consideration, and payable to the lender in connection with the loan;

(d) Any rent, reimbursement, charge, fee, or other amount payable by a lessee or licensee to a lessor or licensor under a lease or license including, but not limited to, any fee payable to the lessor or licensor for consenting to an assignment, subletting, encumbrance, or transfer of the lease or license;

(e) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(f) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(g) Any assessment, fee, charge, fine, dues, or other amount payable to an association pursuant to chapter 64.32, 64.34, or 64.38 RCW, payable by a purchaser of a camping resort contract, as defined in RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, or payable pursuant to a recorded servitude encumbering the real property being transferred, as long as no portion of the fee is required to be passed through or paid to a third party;

(h) Any fee payable, upon a transfer, to an organization qualified under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986, if the sole purpose of such organization is to support cultural, educational, charitable, recreational, conservation, or similar activities benefiting the real property being transferred and the fee is used exclusively to fund such activities;

(i) Any fee, charge, assessment, dues, fine, contribution, or other amount pertaining solely to the purchase or transfer

of a club membership relating to real property owned by the member including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property;

(j) Any fee charged by an association or an agent of an association to a transferor or transferee for a service rendered contemporaneously with the imposition of the fee, provided that the fee is not to be passed through to a third party other than an agent of the association.

(4) "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, recorded or not, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

(5) "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment, inheritance, or other act resulting in a transfer of ownership interest in real property located in this state. [2011 c 36 § 3.]

**64.60.020 Private transfer fee obligations—Enforceability—Interpretation.** (1) A private transfer fee obligation recorded or entered into in this state on or after April 13, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee or holder of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after April 13, 2011, is void and unenforceable.

(2) A private transfer fee obligation recorded or entered into in this state before April 13, 2011, is not presumed valid and enforceable. Any such private transfer fee obligation must be interpreted and enforced according to principles of applicable real estate, servitude contract, and other law including, without limitation, restraints on alienation, the rule against perpetuities, the touch and concern doctrine, and the requirement for covenants to run with the land, as well as fraud, misrepresentation, violation of public policy, or another invalidating cause. [2011 c 36 § 4.]

**64.60.030 Liability.** Any person who records, or enters into, an agreement imposing a private transfer fee obligation in the person's favor after April 13, 2011, is liable for (1) any damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property including, but not limited to, the amount of any private transfer fee paid by a party to the transfer, and (2) reasonable attorneys' fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability must be assessed to the principal, rather than the agent. [2011 c 36 § 5.]

**64.60.040 Notice of private transfer fee obligation.** (1) A payee of a private transfer fee obligation imposed before April 13, 2011, shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation, a separate document in the county auditor's

office in the county in which the real property is located that includes all of the following requirements:

(a) The title, "Notice of Private Transfer Fee Obligation";

(b) The amount if the private transfer fee is a flat amount, the percentage of the sales price constituting the cost of the private transfer fee, or another basis by which the private transfer fee is to be calculated;

(c) The date under which the private transfer fee obligation expires, if any;

(d) The name and address of the payee;

(e) The acknowledged signature of the payee or a representative of the payee; and

(f) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) A payee may file an amendment to the notice of private transfer fee obligation containing new contact information. The amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the real property burdened by the private transfer fee obligation.

(3) If a payee fails to file the notice required under subsection (1) of this section before December 31, 2011, the private transfer fee obligation is not enforceable by the payee. [2011 c 36 § 6.]

**64.60.900 Short title.** This chapter may be known and cited as the private transfer fee obligation act. [2011 c 36 § 2.]

**64.60.901 Effective date—2011 c 36.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2011]. [2011 c 36 § 7.]

## Chapter 64.70 RCW

### UNIFORM ENVIRONMENTAL COVENANTS ACT

#### Sections

64.70.005	Findings—National uniform legislation.
64.70.010	Short title.
64.70.015	Application—Construction—2007 c 104.
64.70.020	Definitions.
64.70.030	Interests in real property—Subordination.
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**64.70.005 Findings—National uniform legislation.** The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the uniform environmental covenants act. The act ensures that environmental covenants, recorded use restrictions negotiated in connection with hazardous waste site cleanups, and other environmental response projects are

legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit such cleanup and reuse contexts. The legislature further finds that nothing in this chapter will amend or modify any local or state laws that determine when environmental covenants are required, when a particular contaminated site must be cleaned up, or the standards for a cleanup.

Adoption of the uniform environmental covenants act in Washington will provide all participants in a cleanup with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with Washington's environmental cleanup programs. [2007 c 104 § 1.]

**64.70.010 Short title.** This chapter may be cited as the uniform environmental covenants act. [2007 c 104 § 2.]

**64.70.015 Application—Construction—2007 c 104.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2007 c 104 § 14.]

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

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

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(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70.105D RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2007 c 104 § 3.]

**64.70.030 Interests in real property—Subordination.**

(1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record

may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant. [2007 c 104 § 4.]

**64.70.040 Covenants—Contents—Agency discretion—Local land use consideration.** (1) An environmental covenant must:

- (a) State that the instrument is an environmental covenant executed pursuant to this chapter;
- (b) Contain a legally sufficient description of the real property subject to the covenant;
- (c) Describe with specificity the activity or use limitations on the real property;
- (d) Identify every holder;
- (e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and
- (f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

- (a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
- (b) Requirements for periodic reporting describing compliance with the covenant;
- (c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;
- (d) Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
- (e) Limitations on amendment or termination of the covenant in addition to those contained in RCW 64.70.090 and 64.70.100;
- (f) Rights of the holder in addition to its right to enforce the covenant pursuant to RCW 64.70.110;
- (g) Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter 70.105D RCW.

(3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

(4) The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

(5) The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportu-

nities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant. [2007 c 104 § 5.]

**64.70.050 Covenants—Enforceability.** (1) An environmental covenant that complies with this chapter runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if:

- (a) It is not appurtenant to an interest in real property;
- (b) It can be or has been assigned to a person other than the original holder;
- (c) It is not of a character that has been recognized traditionally at common law;
- (d) It imposes a negative burden;
- (e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (f) The benefit or burden does not touch or concern real property;
- (g) There is no privity of estate or contract;
- (h) The holder dies, ceases to exist, resigns, or is replaced; or
- (i) The owner of an interest subject to the environmental covenant and the holder are the same person.

(3) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before July 22, 2007, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state. [2007 c 104 § 6.]

**64.70.060 Use of real property—Chapter application.** This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter. [2007 c 104 § 7.]

**64.70.070 Covenants—Providing copies.** (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (a) Each person that signed the covenant;
- (b) Each person holding a recorded interest in the real property subject to the covenant;
- (c) Each person in possession of the real property subject to the covenant at the time the covenant is executed;
- (d) Each municipality or other unit of local government in which real property subject to the covenant is located;
- (e) The department of ecology; and
- (f) Any other person the agency requires.



(2) The validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under this section.

(3) If the agency has not designated the persons to provide a copy of an environmental covenant, the grantor shall be responsible for providing a copy of an environmental covenant as required under subsection (1) of this section. [2007 c 104 § 8.]

**64.70.080 Covenants—Recording and priority of interests.** (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in RCW 64.70.090(3), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. [2007 c 104 § 9.]

**64.70.090 Covenant—Duration—Court action.** (1) An environmental covenant is perpetual unless it is:

(a) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(b) Terminated by consent pursuant to RCW 64.70.100;

(c) Terminated pursuant to subsection (2) of this section;

(d) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(e) Terminated or modified in an eminent domain proceeding, but only if:

(i) The agency that signed the covenant is a party to the proceeding;

(ii) All persons identified in RCW 64.70.100 (1) and (2) are given notice of the pendency of the proceeding; and

(iii) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(2) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in RCW 64.70.100 (1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(4) An environmental covenant may not be extinguished, limited, or impaired by the extinguishment of a mineral interest under chapter 78.22 RCW. [2007 c 104 § 10.]

**64.70.100 Covenant—Amendment or termination by consent.** (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(a) The agency;

(b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

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(c) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(d) Except as otherwise provided in subsection (4)(b) of this section, the holder.

(2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(4) Except as otherwise provided in an environmental covenant:

(a) A holder may not assign its interest without consent of the other parties;

(b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and

(c) A court of competent jurisdiction may fill a vacancy in the position of holder. [2007 c 104 § 11.]

**64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability.** (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(a) A party to the covenant;

(b) The agency or, if it is not the agency, the department of ecology;

(c) Any person to whom the covenant expressly grants power to enforce;

(d) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and

(e) A municipality or other unit of local government in which the real property subject to the covenant is located.

(2) This chapter does not limit the regulatory authority of the agency or the department of ecology under law other than this chapter with respect to an environmental response project.

(3) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant. [2007 c 104 § 12.]

**64.70.120 Covenants—Registry—Information contained.** (1) The department of ecology shall establish and maintain a registry that contains information identifying all environmental covenants established under this chapter and any amendment or termination of those covenants, including the county where the covenant is recorded and the recording number. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department of ecology considers appropriate. The registry is a public record for purposes of chapter 42.56 RCW, but the department shall maintain electronic access to the registry without requiring a public records request for any information included in the registry.

(2) Failure to include information or inclusion of inaccurate information concerning an environmental covenant in the registry does not invalidate or limit the application or enforceability of the covenant. [2007 c 104 § 13.]

**64.70.130 Electronic signatures in global and national commerce act.** This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or supersede section 101 of that act (15 U.S.C. Sec. 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. Sec. 7003(b)). [2007 c 104 § 15.]

### Chapter 64.80 RCW UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

#### Sections

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**64.80.010 Definitions.** The following definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beneficiary" means a person that receives property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant with a right to survivorship. The term does not include a tenant in common or owner of community property.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this chapter.

(7) "Transferor" means an individual who makes a transfer on death deed. [2014 c 58 § 2.]

**64.80.020 Authorized—Prohibited use.** An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. A transfer

on death deed may not be used to effect a deed in lieu of foreclosure of a deed of trust. [2014 c 58 § 5.]

**64.80.030 Revocable.** A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision. [2014 c 58 § 6.]

**64.80.040 Nontestamentary.** A transfer on death deed is nontestamentary. [2014 c 58 § 7.]

**64.80.050 Capacity of transferor.** The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will. [2014 c 58 § 8.]

**64.80.060 Requirements.** A transfer on death deed:

(1) Except as otherwise provided in subsection (2) of this section, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) Must be recorded before the transferor's death in the public records in the office of the auditor of the county where the property is located. [2014 c 58 § 9.]

**64.80.070 Notice, delivery, acceptance, consideration not required.** A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration. [2014 c 58 § 10.]

**64.80.080 Revocation, when authorized or prohibited.** (1) Subject to subsection (2) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) Is one of the following:

(i) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(ii) An instrument of revocation that expressly revokes the deed or part of the deed; or

(iii) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(b) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county auditor of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

(a) Revocation by a transferor does not affect the deed as to the interest of another transferor;

(b) A deed of joint owners is revoked only if it is revoked by all of the joint owners living at the time that the revocation is recorded; and

(c) A deed of community property by both spouses or by both domestic partners is revoked only if it is revoked by both of the spouses or domestic partners, provided that if only one of the spouses or domestic partners is then surviving, that spouse or domestic partner may revoke the deed.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property. [2014 c 58 § 11.]

**64.80.090 Effect during transferor's life.** During a transferor's life, a transfer on death deed does not:

- (1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;
- (2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;
- (3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
- (4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- (5) Create a legal or equitable interest in favor of the designated beneficiary; or
- (6) Subject the property to claims or process of a creditor of the designated beneficiary. [2014 c 58 § 12.]

**64.80.100 Effect at transferor's death.** (1) Except as otherwise provided in this section, or in RCW 11.07.010, and 11.05A.030, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to (b) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to (d) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to chapter 65.08 RCW, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death, including liens recorded within twenty-four months after the transferor's death under RCW 41.05A.090 and 43.20B.080. For purposes of this subsection and chapter 65.08 RCW, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) The last surviving joint owner, the transfer on death deed is effective.

(4) If the property that is the subject of a transfer on death deed is community property and:

(a) The transferor is married and is not joined in the deed by the transferor's spouse or is in a registered domestic partnership and is not joined in the deed by the transferor's domestic partner, the transferor's interest in the property is

transferred to the designated beneficiary in accordance with the deed on the transferor's death; or

(b) The transferor is married and is joined in the deed by the transferor's spouse, or is in a registered domestic partnership and is joined in the deed by the transferor's domestic partner, and:

(i) Is survived by the transferor's spouse or domestic partner, the deed is not effective upon the transferor's death; or

(ii) Is the surviving spouse or domestic partner, the transfer on death deed is effective on the transferor's death with respect to the transferor's interest in the property as of the time of the transferor's death.

(5) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision. [2014 c 58 § 13.]

**64.80.110 Disclaimer of interest.** A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 11.86 RCW. [2014 c 58 § 14.]

**64.80.120 Liability for creditor claims and statutory allowances.** A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in RCW 11.18.200, 11.42.085, and chapter 11.54 RCW. [2014 c 58 § 15.]

**64.80.900 Short title.** This chapter may be cited as the Washington uniform real property transfer on death act. [2014 c 58 § 1.]

**64.80.901 Application.** This chapter applies to a transfer on death deed made before, on, or after June 12, 2014, by a transferor dying on or after June 12, 2014. [2014 c 58 § 3.]

**64.80.902 Nonexclusivity.** The chapter does not affect any method of transferring property otherwise permitted under the law of this state. [2014 c 58 § 4.]

**64.80.903 Uniformity of application and construction—2014 c 58.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. [2014 c 58 § 16.]

**64.80.904 Relation to electronic signatures in global and national commerce act—2014 c 58.** Chapter 58, Laws of 2014 modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2014 c 58 § 17.]

