

Welcome to the

WASHINGTON STATE CHAPTER
of
Community Associations Institute

*The leading professional organization providing education,
resources, and advocacy for community association living.*



WUCIOA
**Washington Uniform Common Interest
Ownership Act**
(RCW 64.90 effective 7/1/18)

Or

***Why
YoU
Care-
It
Obligates
Associations!***

Today:

Legal overview and summary comparisons

Major Changes in these areas:

**Association Management
Reserve Studies
Insurance
Finance**

Opt In considerations

Audience Q&A period (entire panel)



Panelists:

Legal:

Theresa Torgesen, Esq.- Sound Legal Partners, PLLC

Joe McCarthy, Esq.- Stoel Rives LLP

Manager: **Brian McLean, CCAL**- Agynbyte LLC

Reserve Studies: **Jim Talaga, RS**-Association Reserves WA, LLC

Insurance: **Duncan Kirk, CIC, CIRMS**- HUB International NW

Finance: **Catherine Kuhn, CPA**- Newman & Associates, CPA, PC

WHO are you?

Condominiums (Old Act/New Act)

HOAs (single family)

Managers

New Communities formed after 7/1/18



What is WUCIOA?

- Washington Common Interest Ownership Act
- Applies to Common Interest Communities (CICs)
 - Condos, Co-ops, and Planned Communities (Plat and Misc.)



APPLICABILITY

◎ All New CICs

- Created after July 1, 2018

◎ Exceptions

- Small CICs with low assessments
 - 12 Units or less
 - \$300 or less average annual assessment



APPLICABILITY

Existing CICs

(Created before July 1, 2018)

- ◎ RCW 64.90.095: Opt-in
- ◎ RCW 64.90.525: Budget Ratification



BUDGET RATIFICATION (RCW 64.90.525)

Closely matches HOA and Condo Acts
EXCEPT:

- ⦿ Requires 14-50 days' notice
- ⦿ Budget content changes
- ⦿ Special assessments

NOTEWORTHY CHANGES

○ For Condos:

- Email voting & notice [RCW 64.90.455 & 515(3)]

○ For HOAs:

- Incorporation before 1st sale (RCW 64.90.400)
- Resale Certs (& POS) (RCW 64.90.640 & 610)
- Super Priority Lien (RCW 64.90.485)
- Gov Doc Amendment Process (RCW 64.90.285)

NOTEWORTHY CHANGES

- For all new CICs and Opt Ins:
 - Powers and Duties (must/may)
(RCW 64.90.405)
 - Loan Authority & Approval Process
[RCW 64.90.405(4)]
 - Association Records
(RCW 64.90.495)



NOTEWORTHY CHANGES

- For all new CICs and Opt Ins:
 - Meeting Notice
[RCW 64.90.445(1)(c) & 525]
 - Rules Adoption Process
(RCW 64.90.505)
 - New Options for Declaration Amendments
[RCW 64.90.285(13)]



NOTEWORTHY CHANGES

- For all new CICs and Opt Ins:
 - Assessments
(RCW 64.90.480)
 - Super Priority Lien Changes
(RCW 64.90.485)

NOTEWORTHY CHANGES

- Except as expressly provided in this chapter, the effect of the provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived.

(RCW 64.90.015)

NOTEWORTHY CHANGES

- WUCIOA CREATES THREE NEW SPECIAL DECLARANT RIGHTS
- Control any construction, design review, or aesthetic standards committee or process
- Attend meetings of the unit owners and, except during an executive session, the executive board
- Have access to the records of the association to the same extent as a unit owner

NOTEWORTHY CHANGES

- Declarant Control Limitations will now apply to Coops and Planned Communities
- No more Class A/Class B Membership
- Assessment Commencement Rule will now apply to Coops and Planned Communities
- No more free ride for unsold units

Association Management

A Manager

- Keeps the Books and Prepares Financials
- Prepares for and Attends Meetings
- Makes Real Estate Disclosures
- Drafts Budgets
- Counsels Clients
- Enforces Covenants
- Manages Projects

An Ideal Manager

- Interprets and accurately explains financial statements
- Writes and speaks clearly and effectively
- Does not over or under disclose information in a resale certificate
- Knows when to stop and turn a matter over to other professionals
- Is trustworthy

Where Managers are today

- Managers and management companies remain unregulated and unlicensed while
 - Community associations struggle to understand or comply with statutory and covenanted duties and corporate formalities
 - Washington State trends toward greater regulation of community associations
 - State Courts struggle to balance individual property rights and community rights

Managers - Initial Challenge

- How does WUCIOA really affect our clients? Will a client opting in benefit us?
- Will opting in overwhelm volunteers?
- When should the manager defer questions about WUCIOA to the association's attorney?
- Will managers implement some changes regardless of applicability?

Management Accounting

- RCW 64.90.420(2) requires common interest communities (CIC) created after July 1, 2018, even plat communities, to
 - retain the services of an accountant for an audit
 - within 60 days of transition from declarant control to owner control
 - unless a majority of allocated ownership votes elect to waive the audit.

Managers & Budget-Making

- ◎ That was then
 - Many plat communities (e.g., single family homes in a CIC) are subject to limits on how much a budget may increase and sometimes require an affirmative vote of the owners before increasing revenue to fiscally responsible levels.

Managers & Budget-Making

- ◎ This is now (RCW 64.90.080, 095, 525)
 - A budget adopted by the board of every plat community is subject to an owner budget ratification vote.
 - The statute replaces conflicting governing document provisions in older plat CICs.
 - Query. Should the manager always recommend a budget ratification vote?
 - Query. How does the manager deal with conflicting legal opinions about applicability?



Manager Disclosures

- RCW 64.90.640 (Resale Certificates)
 - Applies to all residential Common Interest Communities created after 7/1/18.
 - Requires a CIC to disclose the “delinquent” assessments associated with the seller’s account.
 - Requires the association to disclose anticipated repairs that are “reasonably anticipated” to be in excess of five percent of the board approved annual budget. (cont.)



Real Estate Disclosures-cont.

- Under RCW 64.90.640 a resale certificate
 - Must state whether there is a WUCIOA-compliant reserve study and a summary of any study.
 - Must include minutes from the prior 12 months.
- The statute also imposes a \$100 limit on the association updating a resale certificate within six months.

Managers & Meetings

- Unit owners have a statutory right to speak at a unit owners meeting. RCW 64.90.445 (1).
- But this is nothing. The big changes under WCIOA are to board meetings...

Managers & Board Meetings

- ◎ RCW 64.90.445 (2)
 - Must be Open to Unit Owners unless meeting in executive session for proper purpose.
 - Notice with the agenda must be given 14 days in advance to board members and unit owners.
 - Meetings must be at a place convenient to the community. (cont.)

Mgrs & Bd Meetings (cont.)

- ◎ RCW 64.90.445 (2)
 - The board must provide a reasonable opportunity for all unit owners to comment.
 - Copies of materials distributed to the board, except unapproved minutes and materials to be considered in executive session, must be made available to unit owners.
 - If the board will attend a meeting by conference call, the meeting notice must specify how unit owners can participate.



Mgrs & Bd Meetings (cont.)

- ◎ RCW 64.90.445 (2)

- The board may act by unanimous consent only to undertake ministerial actions, actions subject to unit owner ratification, or to implement previous board meeting actions.
- Are a manager's actions ministerial?
- Will WUCIOA result in fewer meetings?

Manager -- Final Remarks

- Managers counsel boards and help boards implement policy and decisions.
- Managers make expensive attorneys and attorneys make expensive managers.
- Managers are likely to standardize many WUCIOA standards for all their clients.
- WUCIOA compliance may increase management expenses.

Reserve Studies

A stormy past



A bright future?



Which of these is affordable housing?



WA Reserve

Study Law Key Provisions / Changes

WUCIOA RCW	64.90	vs.	64.32	64.34	64.38
Effective:	7/1/2018		1963	1990	1995

Applicability: Expanded to Common Interest Communities (CIC). Condominium, Plat Community, Cooperative, Misc. Community, etc.. – see definitions

Key language: 64.90.545 - Unless exempt (2), an association must prepare and update a reserve study annually. (2) Unless the governing documents require otherwise, reserve study requirement does not apply to CIC's restricted to nonresidential use, or that have only nominal reserve costs, or the cost of the study exceeds 10 % of the association's annual budget.

Nominal reserve costs: (new definition, replaces “significant assets”) means that the current estimated total replacement costs of the reserve components are less than 50% of the annual budgeted expenses, excluding reserve contributions, for a condo or co-op containing horizontal unit boundaries, and less than 75% of the annual budgeted expenses for all other CIC's. As a practical matter, requirement will apply to any CIC with any, or all, common: roof, siding, asphalt, windows or decks. You may need help from RS provider to determine for plat (HOA). If assets limited to entrance monument and mailboxes, requirement for Reserve Study is **not** likely.

Reserve Study cont...

Contents:

64.90.550 Provisions to WUCIOA only, does **not** supersede prior acts.

Key differences: 64.90.525 (2) (a) (j) (l) (2) A Reserve Study must include: **(a)** “ A reserve component list...cost of which exceeds 1% of annual budget...” Prior law spelled out specific components, in addition to 1% rule. **(j)** A projected reserve account balance for 30 years based on each funding plan presented in the reserve study. **(l)** A statement of the amount of any current deficit or surplus in reserve *funding* expressed on a per unit basis. If allocations vary by unit, current deficit or surplus in a manner that reflects the variation.

Notable: “*funding*” likely to be interpreted as budgeted rate. Intent of per unit deficit was intended to provide comparison between properties, of *reserve fund balance*, expressed on a dollars per unit average basis.

Reserve Study cont...

Budgets & disclosures:

64.90.525 Provisions retroactive through previous Acts.

Key Language: 64.90.525 (2) (d) (e) (f) (2) Budget must include: (d) Current amount of regular assessments budgeted for contribution to the reserve account; (e) A statement of whether the association has a Reserve Study that meets the requirements of 64.90.550 (contents) and if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and (f) The current deficiency or surplus in reserve funding expressed on a per unit basis.

Prior condo disclosure required: comparison of future cash flows at the board of directors proposed budgeted reserve contribution rate vs. the recommended rate by their reserve study provider.

Notable: 64.90.620 Public Offering Statement for Conversion Condo's stipulate (f) the current deficiency or surplus in reserve funding expressed on a per unit basis

Reserve Study cont...

Demand – Enforcement:

64.90.555 (1) When more than three years have passed since date of last Reserve Study professional, unit owners of at least 20% of the votes may demand cost of study be included, and study conducted in the upcoming budget year.

(2) One or more unit owners may bring action to enforce. In such an action, a court may order specific performance and may award reasonable attorney's fees and costs to the prevailing party.

(3) A unit owner's duty to pay assessments is not excused because of the association's failure to comply with this section and 64.90.545 & .550. A budget ratified by the unit owners is not invalidated because of the association's failure to comply.

Insurance

Insurance – What’s Changed?

- Ambiguity to clarity on condo unit coverage?
Condo Act - “which may, but need not, include equipment, improvements and betterments in a unit....” to:
WUCIOA - buildings which contain units with horizontal or vertical boundaries that comprise common walls between units .. “to the extent reasonably available, must include the units and, unless provided otherwise in the declaration, all improvements and betterments to the units”.
○ Fidelity requirement.

Finance

FUN with Funds:

**Financial Statements, CPA Audit
Requirements, Assn Funds**

Reserve Accounts

Reserve account withdrawals

Financial Statements, Assn Funds, CPA Audit Requirements (RCW 64.90.530)

Financial Statement Requirements:

- **OLD ACT Condo:**

- GAAP (Generally Accepted Accounting Principles) is NOT mentioned
- Best practice: Accrual financial statements

- **NEW Act - Condo:**

- GAAP financials (year- end) required (GAAP is Accrual basis, but Act doesn't say "Accrual")
- Resale certificate RCW specifically requires "accrual basis" no more than 120 days back (64.34.425(i))

HOA Act

- GAAP is not specifically required, however it says “... keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status...”
- *Best practice- GAAP/accrual*

WUCIOA:

- RCW 64.90.530(1):
 - Must prepare financial statements at least annually in accordance with **ACCRUAL** based accounting practices
 - *The audit does not prepare FS- should be internally prepared*

Accrual basis~

Fraud Control:

- All billings to homeowners recorded and tracked

Industry standard:

- Consistent reporting and comparison to budget

Audit Requirements

“OLD ACT” Condo (RCW 64.32.170)

- Defaults to the NEW ACT requirements, UNLESS the governing documents require an audit – then an audit is required, regardless of size

“NEW ACT” Condo

- RCW 64.34.372
 - 50 or more units – must be audited annually
 - Fewer than 50- audit is required, but can be waived by 60% of the membership
- RCW 64.34.308
 - Transfer of control from the Declarant to Unit Owners: (Developer transition)
 - Audit required as of the date of transfer unless 2/3 of unit owners (other than Declarant) elect to waive

HOA Act (RCW 64.38.045)

- If Assessments are \$50,000 or more, annual audit required.
- Annual waiver allowed by 67% of owners

WUCIOA: (RCW 64.90.530)

- If Assessments are \$50,000 or more (all types of communities) – Annual CPA audit required
- If less than \$50,000, annual audit required, BUT, may be waived annually by unit owners other than Declarant to which majority of votes are allocated, excluding votes allocated to Declarant

WUCIOA (RCW 64.90.420 (2)):

- Developer Transition audit required for ALL communities
- Retain CPA within 60 days of Developer Transition meeting
- Audit as of the date of the transition meeting
 - *Practically speaking: Audit period should start when assessments started, at least for Condos (this could be 1-2 yrs back)*
- May be waived by a majority of the unit owners, not including the Declarant units (lower standard than “New Act”)
- *Typically, NOT a good idea to waive the Developer Transition audit:*
 - *Risk is that the Developer/Declarant did not bill themselves for all unit assessments each month and/or that expenses that are the responsibility of the Declarant were paid by the Association*

Audit Considerations – WUCIOA changes

Condos: This will include more condominiums as the \$50,000 assessments is a lower threshold than 50 units

HOAs: Under HOA act, VERY large HOAs can waive their annual audit with sufficient votes. (New) larger HOAs will now have an audit requirement

Funds & Reserve Accounts

(RCW 64.90.530 and 535)

Old Act Condo:

- Nothing specific

New Act Condo:

- RCW 64.34.372
 - Funds not commingled with the funds of any other association or association manager
 - Reserve funds kept in segregated account
 - Transaction affecting funds (including checks) requires 2 officer/director signatures

New Act Condo

- RCW 64.34.380
 - Association is “encouraged” to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements. BOD administers the account.
 - *No requirement to fund the account*

HOA Act:

- RCW 64.38.045 and 64.38.065
- SAME as New Act Condo

WUCIOA:

- Keep All Funds in the name of the Association, with a “**Qualified Financial Institution**” (RCW64.90.530-(3))
 - Definition of “**Qualified Financial Institution**” (QFI)-- Bank, Savings Associations, Credit Unions insured by Federal Government (RCW 64.90.010-(40))
 - ***Operating and Reserve accounts- All funds***
- Managing agent who accepts/receives funds belonging to the association must promptly deposit into an account maintained by the association (RCW 64.90.530-(4))

WUCIOA: Reserve accounts: (RCW 64.90.535)

- IF an association is required to obtain a reserve study (.545) THEN MUST establish one or more accounts for replacement costs of reserve components. (*Does NOT say “must fund”*)
- Must be “**income earning account**” under the “direct control of the board” and “the board is responsible for administering the reserve account.”
- *QFI applicable to this section since .530 applies to “ALL funds.”*
- *Does not mention a “2 signature on checks” required – possibly due to the “direct control of the board” language which would indicate the board approves transactions (similar to “2 signatures”)*

WUCIOA: Reserve Account Withdrawals: (RCW 64.90.540)

- OK to withdraw from reserve account for unforeseen or unbudgeted costs that are unrelated to replacement costs of the reserve components.
 - Must record in the minutes
 - Notice to each unit owner
 - Adopt a 24 month repayment schedule unless unreasonable burden on unit owners
 - This is the same as New Act Condo and HOA Acts
- Annual budget should include: (this is new)
 - Notice of withdrawal
 - Statement of current deficiency in reserve funding on a per unit basis (see definition in RS contents – [64.90.550 (2) (I)])
 - Repayment plan

WUCIOA: Reserve Account Withdrawals

- RCW 64.90.540 (2)- Board may withdraw funds without the above notice/repayment requirements to pay for replacement costs of reserve components not included in the reserve study
 - Similar to prior Acts
 - *Will need to update the reserve study*



HOW TO OPT INTO WUCIOA

(RCW 64.90.095)

- Amend gov docs with existing procedures
- OR
- WUCIOA procedure:
 - Board or 20% of owner propose amendment
 - 30 day notice to owner and hold meeting
 - After meeting, 2nd notice with ballot
 - Deemed approved if 30% participate and 67% vote in favor

NOTA BENE

- There will be four sets of rules going forward: HPRA, HOA Act, WCA and WUCIOA.
- There will be two forms of POS: WCA and WUCIOA.
- There will be two forms of Resale Certificate: WCA and WUCIOA.



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CALM
AND
ASK
QUESTIONS**

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