

Proposed Amendments to
Chapter 283, Laws of 1995
Draft #5, 1/6/96
Prepared by Jim Strichartz

AN ACT Relating to homeowners' associations; and adding a new chapter to Title 64 **amending Chapter 64.38** RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. The intent of this chapter is to **give statutory recognition to associations that operate residential communities in this state, to provide consistent laws regarding and procedures for the formation and legal administration of homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.**

Sec. 2. For purposes of this chapter: (1) **"Assessment" means all sums chargeable by the association against a lot 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.**

~~_____~~ (2) "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 **entity responsible for the operation of a community in which the voting membership is made up of lot owners, in which membership is a mandatory condition of lot ownership, and which is authorized by its governing documents to impose assessments.** "Homeowners' association" or **"association"** does not mean an association created under chapter 64.32 or 64.34 RCW.

~~(2) "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.~~

~~(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~~ **(a) real property owned by the association, (b) real property owned as tenants in common by some or all of the members of the association and maintained, repaired or administered by and administered by the association pursuant to the governing documents, (c) real property required by a declaration of covenants to be conveyed or leased to the association, and (d) real property otherwise dedicated exclusively for common use by the members of** the association.

~~(5) "Common expense" means the costs~~ **any cost** incurred by the association to exercise any of the powers provided for in this chapter **or the governing documents.**

(6) "Community" means the real property that is subject to a declaration of covenants and which is intended primarily for residential use.

(7) "Declaration of covenants," or "declaration," means a recorded written instrument in the nature of covenants running with the land which subjects the real property comprising the community to the jurisdiction and control of an association or associations.

(8) "Eligible mortgagee" means the holder of a mortgage on a lot 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.

(9) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a conveyance in lieu thereof.

(10) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, 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, and all duly adopted, and in the case of the declaration recorded, amendments, supplements and exhibits thereto.

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

(12) "Limited common area" means a portion of the common areas allocated by the declaration for the exclusive use of one or more but fewer than all of the lots.

(13) "Lot" means a platted or unplatted lot, tract, condominium unit or apartment, or other subdivision of real property within a community, as described in the declaration, which is capable of separate conveyance, and of which the lot owner, is obligated (a) by the governing documents to be a member of an association that serves the community, and (b) to pay assessments to the association.

(14) "Lot owner" or "Owner" means a person who owns a lot or leases a lot in a leasehold community under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the lot from the community, but does not include a person who only holds a mortgage on a lot. "Lot owner" or "Owner" means the vendee, not the vendor, of a lot under a real estate contract.

(15) "Master association" means an organization described in RCW 64.38. [section 17 of this chapter], whether or not it is also a homeowners association described in RCW 64.38.010(2).

(15) "Mortgage" means a mortgage, deed of trust or real estate contract encumbering one or more lots.

(16) "Real-

(6) "Residential real property" means any real property, the use of fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, servitudes, 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.

(17) "Residential use" means use which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

Sec. 3. This chapter does not apply to a community that is primarily comprised of property restricted for commercial, industrial, or other nonresidential use.

Sec. 4. The membership of an association at all times shall consist exclusively of the owners of all real property **lots** over which the association has jurisdiction, both developed and undeveloped.

Sec. 4 **5.** Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws, **and reasonable** rules, and regulations **consistent with the purposes of the association**;

(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~~ **to enforce the governing documents or the provisions of this chapter and in** matters affecting the homeowners' association, ~~but not~~ **or the common areas; provided, however, that nothing herein shall authorize such action by the association** on behalf of owners involved in disputes that are not the responsibility **concerned with the purposes and responsibilities** of the association; **and further provided, that nothing herein shall deprive a particularly aggrieved owner of the right to bring or defend an action on his or her own behalf.**

(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,~~ **Subject to RCW 64.38. _____ [section 7 of this chapter], execute plat amendments, dedicate common area for public use, and 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 **or for services provided to individual owners;**

(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 **governing documents;**

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

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

Sec. 5 ~~6~~. (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, **unless otherwise provided in the governing documents,** the board of directors may fill vacancies in its membership ~~of~~ **for** the unexpired portion of any term.

(3) ~~Within thirty days after adoption~~ **All regular and special assessments, other than special assessments which according to the governing documents of the association may be imposed on a particular owner or lot, shall be made pursuant to a budget adopted** by the board of directors ~~of~~ **and ratified as provided herein. Within thirty days after adoption by the board of directors of any proposed** budget of the association, the board shall set a date for a meeting of the owners **provide a copy of the budget or a summary thereof setting forth the material elements and totals of income and expenditures included therein to the members, and shall give notice to the members of a membership meeting** to consider ratification of the budget.

The meeting shall be held not less than fourteen nor more than sixty days after mailing the date of the summary notice. Unless at that meeting the owners of eligible voting members to whom a majority of the votes in the association are allocated, or any larger percentage which is specified in the governing documents, vote to 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; provided, however, that if the governing documents require the affirmative approval of the membership to adopt a budget or to approve assessments, the voting requirements of the governing documents shall control. If a proposed budget or assessment is rejected or the required notice is not given, the periodic budget or assessment last ratified by the owners shall be continued until such time as the owners members as provided in this section or otherwise properly adopted pursuant to the governing documents prior to the effective date of this chapter shall continue in effect until the members ratify a subsequent budget proposed or assessment adopted by the board of directors in the manner provided herein.

(4) The governing documents may contain a procedure for removal of directors. If the governing documents do not provide for the removal of the directors by the members, then any director elected by the members may be removed, with or without cause, by two-thirds of the votes cast by eligible voting members having voting rights with regard to the election of that director, at a membership meeting which has been called for that purpose.

(4) 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. Notice of the meeting shall identify any directors whose removal is proposed. Any such director shall be given the opportunity to address the meeting with regard to the motion for removal.

Sec. 6. Unless provided for in the Sec. 7. (1) Portions of the common areas which are not necessary for the habitability of a lot may be conveyed or subjected to a security interest by the association or dedicated to public use if the owners of lots to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies, agree to that action; but all the owners of lots to which any limited common area is allocated must agree in order to convey that limited common area or subject it to a security interest. Proceeds of the sale or financing of any portion of the common area are an asset of the association, but the proceeds of the sale of a limited common area must be distributed equitably among the owners of the lots to which the limited common areas were allocated.

(2) An agreement to convey common areas in a community, or to 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 lot owners. The agreement must specify a date after which the agreement will be void unless the requisite number of lot owners have approved the agreement.

(3) The association, on behalf of the lot owners, may contract to convey or dedicate common areas or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to 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 areas unless made pursuant to this section, is voidable.

(5) A conveyance or encumbrance of common areas pursuant to this section shall not deprive any lot of its rights of access and support.

Sec. 8. Unless provided elsewhere in the other 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.

Sec. 7 ~~9~~. (1) A meeting of the association must be held at least once each year. Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the corporation, nor does such failure affect otherwise valid corporate acts. Special meetings of the association may be called by the president, a majority of the board of directors, or by ~~owners~~ eligible voting members having ~~ten~~ twenty percent of the votes in the association or such lower percentage as may be set in the governing documents. Not less than fourteen nor more than sixty days in advance of any meeting of the association, the secretary or other ~~officers~~ 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 ~~owner~~ member or to any other mailing address designated in writing by the ~~owner~~ member to any person authorized to receive notices on behalf of the association. 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~~ governing documents, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Unless otherwise provided in the governing documents, any action required or permitted by this chapter or the governing documents to be taken at an annual or special meeting of members may be taken without a meeting, if the action is approved by members entitled to vote on such action having not less than the minimum number of votes which would be

necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted. In order to be effective, all of the members entitled to vote thereon must have been given written notice at least fourteen (14) days in advance of the proposed action, and the action must be evidenced by one or more written consents or ballots describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the association. The notice shall state a date by which the requisite number of consents or ballots must be received for the action to be effective. Any notice given in lieu of a meeting required to be held pursuant to RCW 64.38.025(3) to ratify a budget adopted by the board shall provide a period of not less than thirty (30) days for the return of ballots rejecting the budget. Any written consent or ballot may be revoked prior to the date that the association receives the required number of consents or ballots to authorize the proposed action. A consent, ballot or revocation is not effective unless in writing and until received by the association at its principal office in this state or its principal place of business, or received by the corporate secretary or other officer or agent of the corporation authorized to receive notices on behalf of the association. Within ten (10) days after obtaining such authorization by written consent or ballot, written notice describing the action taken must be given to all members. A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Whenever action is taken pursuant to this section, the written consent of the members consenting to such action or the written reports of the persons appointed to tabulate such consents shall be filed with the minutes of proceedings of members.

(3) A member who is entitled to vote may vote in person or, unless the governing documents otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. An appointment of a proxy is not valid after eleven months following the date of its execution unless otherwise provided in the proxy. A board member may not vote by proxy at a board meeting.

(4) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record ~~members~~ 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 ~~Unless prohibited or restricted by the governing documents, 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~~ any matter which the board determines in good faith should not be considered in open session in furtherance of the best interests of the association and its members, including but not limited to matters involving personnel issues, consultation or consideration of communications with legal counsel; ~~and discuss,~~ likely or pending litigation, ~~matters involving possible violations of the governing documents of the association, and matters involving,~~ and 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.

(5) Minutes of all meetings of the members of an association and of the board of directors of an association must be maintained in written form. The decision on each matter voted upon at a membership meeting or a board meeting must be recorded in the minutes.

(6) A director of an association who is present at a meeting of its board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless the director's dissent or abstention shall be entered in the minutes of the meeting or unless the director shall file his or her written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent or abstention by registered or certified mail, return receipt requested, to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Sec. 10 ~~Sec. 8.~~ Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if ~~the owners~~ **eligible voting members** 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.

~~Sec. 9~~ **11.** (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~~ **shall keep or cause to be kept detailed and accurate financial records.** 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~~ **Except to the extent provided in sub-section (3) of this section, 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) Unless prohibited or restricted by the governing documents, books and records kept by or on behalf of an association may be withheld from examination or copying by a member, a holder of a mortgage on a lot, or their respective agent to the extent that the records concern:

(a) Personnel matters which are customarily kept confidential by a business;

- (b) Medical or health records of any employee of the association, any member, or other occupant of a lot;
- (c) Communications with legal counsel or attorney work product that are privileged with respect to third parties;
- (d) Negotiations relating to transactions prior to their completion which the board determines for good cause should be withheld;
- (e) Agreements which for good cause prohibit disclosure to the members;
- (f) Pending litigation which the board determines for good cause should be withheld;
- (g) Pending proceedings for enforcement of the governing documents which the board determines for good cause should be withheld;
- (h) Unlisted telephone numbers and security access information provided to the association for emergency purposes;
- (i) Credit information protected by the Fair Credit Reporting Act (15 USC §1681 et seq.);
- (j) Meeting minutes or other records of an executive session of the board of directors held pursuant to RCW 64.38. (sub-section (4) of section 8 of this act).
- (k) Information otherwise protected from disclosure by law.

~~(4) 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.~~

~~Sec. 10. 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.~~

~~Sec. 11. Sections 1 through 10 of this act constitute a new chapter in Title 64 RCW.~~

~~—END— must either be presented in accordance with generally accepted accounting principles, or must contain a report of actual receipts and expenditures on a cash basis showing a detailed breakdown of receipts and expenditures by classification, the beginning and ending cash balances for all accounts of the association, and the beginning and ending balances for all accounts payable and accounts receivable of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more must be presented in accordance with generally accepted accounting principles and must be audited at least annually by an independent certified public accountant, but the audit may be waived for any year if sixty-seven percent of the votes cast by eligible voting members at a meeting of the association at which a quorum is present, approve waiving the audit.~~

(5) 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, nor kept in any trust account or custodial account in the name of any trustee or custodian.

Sec. 12. (1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, and the governing documents of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with this chapter or the governing documents may be brought by the association or by any member against: (a) The association; (b) a member; (c) any director or officer of an association who willfully and knowingly fails to comply with these provisions; and (d) any tenants, guests, or invitees occupying a lot or using the common areas. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This section does not deprive any person of any other available right or remedy.

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities, and a member's voting rights, and may levy reasonable fines against any member or any tenant, guest, or invitee, in accordance with a previously established schedule adopted by the board of directors and furnished to the owners and tenants.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three impartial persons appointed by the board. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of sub-section (a) of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments when due.

(c) Suspension of common-area-use rights shall not impair the right of an owner or tenant of a lot to have vehicular and pedestrian ingress to and egress from the lot, including, but not limited to, the right to park.

Sec. 13. (1) The association has a statutory lien on a lot for any unpaid assessments levied against a lot from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a lot except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the lot 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 lot. 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 capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.38. [sub-section (3) of section 6] which would have become due in the absence of acceleration 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 non-judicial foreclosure by a mortgagee, the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract, or the date of recording of an instrument in lieu of foreclosure. For the purposes of this subsection, capital improvements shall not include common expenses for repairing or replacing the common areas with substantially equivalent items.

(4) The priority of the association's lien against lots 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 materialmen's 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, or if the association forecloses its lien against abandoned improved real estate pursuant to RCW 61.12.093 through 61.12.095, 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 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 community 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 lots in the

community in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the lot owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the lots 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 lot 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 lot 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 lot as and when due. If the rental is not paid, the receiver may obtain possession of the lot, refurbish it for rental up to a reasonable standard for rental lots in this type of community, rent the lot 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 lot, 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 lot.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a lot who obtains the right of possession of the lot 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 lot owners, including such mortgagee or other purchaser of the lot. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the lot prior to the date of such sale as provided in this section.

(12) In addition to constituting a lien on the lot, each assessment shall be the joint and several obligation of the owner or owners of the lot to which the same are assessed as of the time the assessment is due. No lot owner may exempt himself or herself from liability for assessments by waiver of the use or enjoyment of any of the common areas, by abandonment of the lot, or otherwise, nor shall an owner be entitled to withhold payment of assessments or otherwise exercise a right of setoff or defense against the association on account of any claim which the owner may have or assert against the association. In a voluntary conveyance or other transfer of a lot other than by foreclosure, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter 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; provided, however, that if a statement of assessments is furnished to a grantee pursuant to sub-section (15) of this section, the liability of the grantee for unpaid assessments accrued through the date of that statement shall not exceed the amount set forth therein. Suit to

recover a personal judgment for any delinquent assessment shall be maintainable in the superior court of the county in which the lot is located or in any other 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 reasonable rate of interest, not to exceed eighteen percent per annum, to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established 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, if the matter results in a judgment, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees, including costs and reasonable attorney's fees incurred on appeal and in the enforcement of a judgment.

(15) Upon written request, the association shall furnish to a lot 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 lot. 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 lot 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.

Sec. 14. If any existing homeowners' association desires to amend its declaration to adopt any provision permitted by this chapter and the declaration does not provide a process by which it may be amended, any amendment drafted for this purpose may be approved by eligible voting members to whom a majority of the votes in the association are allocated.

Sec. 15. (1) From time to time the dollar amounts specified in RCW 64.38. [subsection (4) of section 11 of this chapter] must change, as provided in subsection (2), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1982-84 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor (the "Index"). The Index for December 1995, which was _____, is the Reference Base Index.

(2) If the Index is revised after December, 1995, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

Sec. 16. 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.

Sec. 17. Master Associations. (1) If the declaration provides that any of the powers described in RCW 64.38.020 are to be exercised by or may be delegated to a profit or nonprofit corporation or association which exercises those or other powers on behalf of a development consisting of one or more condominiums or communities or for the benefit of the owners of one or more condominiums or communities, all provisions of this chapter applicable to homeowners' associations apply to any such corporation or association, except as modified by this section, and except to the extent that such corporation is a master association subject to RCW 64.34.276.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.38.010(2), it may exercise the powers set forth in RCW 64.38.020(1)(b) only to the extent expressly permitted in the declarations of the condominiums or communities which are part of the master association or expressly described in the delegations of power from those condominium associations and homeowners' associations to the master association.

(3) If the declaration of any condominium or community 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 64.38.025(3) and (4), 64.38.035(1), (2) and (3), 64.38.040, and 64.38. [section 7 of this act] apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise lot owners within the meaning of this chapter.

(5) Even if a master association is also an association described in RCW 64.38.010(2), the articles of incorporation or other instrument creating the master association and the declaration of each condominium and community, 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 in any of the following ways:

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

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