

PREFACE

This book is made up of a selection of topics we believe Associations will find useful and informative. These were written after we asked ourselves, “What topics keep coming up with our clients over and over again?” We also included chapters aimed at providing information we think all Association managers should have, but often do not.

We kept the chapters very short. To further flesh out each topic, we have provided more detailed information, including citations to relevant statutory and case law, in the endnotes. Each topic is intended to be useful standing alone, but some are complementary. We recommend that you read the section entitled “Basic Legal Information” first.

This book is not a substitute for advice from a qualified attorney. While there are many similarities between Associations and their Governing Documents, without reviewing the specific documents and the facts and circumstances involved, we cannot give competent advice about any situation you might face.

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Should you desire legal advice on these or other areas of law pertaining to a condominium or homeowners’ association in Washington State, please consider Condominium Law Group, PLLC.

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BASIC LEGAL CONCEPTS AND INFORMATION

Condos

“Condominium” refers to real property developments in which the property can be divided by lines on the ground like traditional real estate, but can also be divided with horizontal planes, like the floors of a building. The individual owners each own an undivided (collective) interest in the common areas (like offices, lobbies, elevators, recreational facilities, hallways, parking garages, pools, etc.). The unit (or apartment) is a separate piece of property within a whole. A carton of eggs is an excellent analogy for the condominium structure. Each egg is a unit with a defined boundary. The carton is all the common elements surrounding and between the eggs.

A condominium is the collection of units, which are the physical entity. The Association of owners is the legal entity that manages the affairs of the condominium and its owners. Usually, the Association itself owns no property. Common elements, even a manager apartment, would be owned by the unit owners collectively, and typically have no tax parcel number associated with them.

While every owner is a member of the Association, the Association is a legal entity that is governed by its Board of Directors. Actions taken by the Association are decided by the Board Members. Attorneys who work for Associations take direction from and provide advice to the Association board. Whether that information is shared is at the discretion of the Board Members, not individual owners.

Often, outside managers are hired by the Board to assist with the administration of the Association and the management of the physical property. These managers are agents of the Association and act at the direction of the Board, or where Board powers have been delegated to the manager by the Board, they may act on behalf of the Association without further consultation with the Board.

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HOAs

Many residential developments that are not condominiums are governed as “homeowners’ associations” or HOAs. An HOA is an association where all members own separate real property and pay assessments for common expenses associated with property other than that owned by each member. An HOA is separate from the property and is an organization in which membership is tied to the ownership of property within a community.

Usually, in addition to an obligation to pay for some common property or services, there are covenants and conditions that restrict the property rights of the owners within a community governed by an HOA. In addition, the HOA often has some power to enforce or regulate the use of the property within the community. Generally, any restrictions on the use of the property must be contained within the recorded deed for the property, though it may be through reference to some other recorded document.

Which Laws Apply?

Associations of owners of property that are not condos are governed by the Homeowners’ Association Act (Chapter 64.39 RCW). The HOA Act does not apply to non-residential developments or residential cooperatives.

Any HOA formed as a nonprofit corporation is also governed by the Nonprofit Corporations Act (Chapter 24.03 RCW) or the Nonprofit Miscellaneous and Mutual Corporations Act (Chapter 24.06 RCW). To a certain extent, these acts also implicate the Business Corporations Act (Title 23B RCW). Other state laws will apply in some situations and federal laws like the Fair Housing Act and Americans with Disabilities Act may also apply.

Condos and their owners’ Associations created after July 1, 1990, (meaning the declaration was recorded on or after that date) are governed by the Washington Condominium Act, RCW 64.34 (the “New Act”). It is now 25 years old, but is still “new” compared to the prior statute.

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Condos and their owners' Associations that were created before July 1, 1990, are generally governed by the Horizontal Property Regimes Act, RCW 64.32 (the "Old Act"). Parts of the New Act also apply to older condos, and we generally advise our clients in "Old Act" condos to comply with the more stringent provision in any given case to be safe.

Any condominium Association formed as a nonprofit corporation, which should include all "New Act" condominiums, is also governed by the Nonprofit Corporations Act, RCW 24.03, or the Nonprofit Miscellaneous and Mutual Corporations Act, RCW 24.06. To a certain extent, these acts also implicate the Business Corporations Act. Other state laws will apply in some situations, and federal laws like the Fair Housing Act may apply as well.

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