

## **Board Member Eligibility: Does a person have to be an owner to serve on the Board?**

Washington law does not prohibit non-owners from serving on an Association's Board. However, an Association is free to prevent non-owners from serving on the Board by including a requirement in its Governing Documents that Board members must be owners.<sup>1 2 3</sup>

Most Associations in Washington are incorporated under the Nonprofit Corporation Acts.<sup>4 5</sup> Under those laws, Associations may restrict Board membership to owners in the Declaration or Bylaws.

For condo Associations, any person who is a partner, director, or officer in an entity that owns a unit is considered an owner of the unit (unless the condo Association's Declaration or Bylaws provide otherwise) for purposes of determining a person's qualifications for serving on the Board.<sup>6</sup>

The HOA Act is silent on whether partners, directors, or officers in entities that own a home are considered homeowners for purposes of determining qualifications for an Association's Board.<sup>7</sup> It would be best for the Bylaws to state if these people qualify to serve on the Board. However, if the Bylaws are also silent on the matter, Washington courts would likely conclude that, like condos, any person who is a partner, director, or officer in an entity that owns a home is an owner.

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<sup>1</sup> RCW 64.34.324(1) (Bylaws) provides:

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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;

<sup>2</sup> *RCW 64.38.030 (Association bylaws) provides:*

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;

<sup>3</sup> The Old Act is silent on qualifications for Board members and who can be a Board member. See RCW 64.32.

<sup>4</sup> 24.03.095 (Board of directors) provides:

Directors need not be . . . members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

<sup>5</sup> **24.06.125 (Board of directors) provides:**

Directors need not be . . . shareholders of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

<sup>6</sup> *RCW 64.34.324(3) (Bylaws) provides:*

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*In determining the qualifications of any officer or director of the Association, the term "unit owner" . . . 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.*

<sup>7</sup> See RCW 64.38.030.