

**Withholding Assessments: Can an owner withhold assessments if he does not use the Association’s amenities or if the owner has a dispute with the Association?**

An owner may not withhold assessments for his or her share of common expenses.

The HOA Act and the Condo Acts allow Associations to impose assessments on owners for their share of common expenses even if an owner does not use the Association’s amenities or has a dispute with the Association.<sup>1 2</sup> The Acts also grant Associations the power to impose late fees for overdue assessments.<sup>3 4 5</sup> The HOA Act and Condo Acts allow Associations to alter these default rules in their Governing Documents. But an owner has no general right to withhold assessment payments without a provision for withholding in the Governing Documents.<sup>6 7</sup>

Although an owner cannot withhold assessment payments, they are entitled, on request, to a hearing to dispute their assessments.<sup>8</sup> If the hearing provided by the Board is not meaningful (or if no hearing is provided), then the owner’s remedy is to sue the Board for breach of its duty of care.

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<sup>1</sup> Old Act: RCW 64.32.080 (Common profits and expenses) provides:

. . . common expenses shall be charged to the [unit] owners according to the percentage of the undivided interest in the common areas and facilities.

New Act: RCW 64.34.304(1) (Unit owners’ association—Powers) provides:

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

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(b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners...

<sup>2</sup> RCW 64.38.020 (Association powers) provides, in relevant part:

Unless otherwise provided in the governing documents, an Association may:

(2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

<sup>3</sup> RCW 64.32.200(1) (Assessments for common expenses...) provides, in relevant part:

The declaration may provide for the collection of all sums assessed by the Association of [unit] owners for the share of the common expenses chargeable to any [unit] and the collection may be enforced in any manner provided in the declaration . . .

<sup>4</sup> RCW 64.34.304 (Unit owners' Association — Powers) provides, in relevant part:

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

(k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) . . .

<sup>5</sup> RCW 64.38.020 (Association powers) provides, in relevant part:

Unless otherwise provided in the governing documents, an Association may:

(11) Impose and collect charges for late payments of assessments.

<sup>6</sup> See, *Panther Lake Ass'n v. Juergensen*, 76 Wn. App. 586 (1995) (Defects in an Association's capital improvements do not provide members with a defense to withholding payment of assessments imposed to pay for the improvements.)

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<sup>7</sup> See, *Farm Homeowners Ass'n v. Burley*, 1999 Wash. App. LEXIS 1911 (Wash. Ct. App. Nov. 8, 1999) (Court held the owner could not lawfully withhold assessments from the Association as self-help to offset against alleged money owed to the owner by the Association.)

<sup>8</sup> See RCW 64.38.020 (11) (Association powers); RCW 64.34.304(k) (Unit owners' Association — Powers); RCW 64.34.010(1) (Applicability) RCW 64.34.304(k) is applicable to Old Act condo Associations.