

Inspection and Repairs: How can an Association gain entry to an owner's property for inspection or repair?

An Association can gain entry into a property to make repairs or to inspect the property by reasonably notifying the owner and any occupants of the need to gain access to the property (to inspect or repair) and obtaining the owner's voluntary compliance. The Association's Governing Documents can (but usually do not) expressly provide the required notice for gaining access to an owner's property. If the Governing Documents are silent as to what notice is required to gain access to a property to inspect or repair, Washington courts will default to the general rule that the notice must be reasonable. What is considered "reasonable" will depend on the specific facts of each case.

By statute, Associations are charged with maintaining and repairing common areas and limited common areas.^{1 2} Most Declarations provide for the Association to make repairs to an individual home or Lot if the owner fails to do so (these provisions will contain a right to gain entry to repair, but usually are silent regarding inspection). Owners and occupying tenants must allow an Association and its agents to have access to their homes in order to make repairs.

An Association's access to a unit must be reasonable. The New Act and Old Act do not clarify what "reasonable" means.³ The HOA Act does not mention "reasonable" in this context. There is no Washington case law which clarifies what "reasonable" means in the context of an Association's need to gain access to an owner's property. However, Washington's Residential Landlord-Tenant Act⁴ and case law addressing landlord repairs and

inspection of rented premises can serve as a guide for what reasonable might mean in this context.

The Landlord-Tenant Act requires tenants to reasonably allow landlords to have access to the rented premises to make necessary repairs or to inspect the premises.⁵ Washington courts have defined “reasonable” to mean that a landlord must give the tenant at least two days’ notice of the landlord’s intent to enter the premises.⁶ The notice must state the exact time and date (or dates) for when the entry will occur.⁷

There are two exceptions where a landlord does not have to give reasonable notice (meaning at least two days’ notice) before entering a tenant-occupied property: if it is an emergency⁸ or if a landlord needs to allow a code enforcement official to inspect the premises to determine the presence of an unsafe building condition or a building code violation.⁹ An example of an emergency is where a pipe has burst and the leaking water is causing immediate damage to the owner’s property or to the property of other owners or to common elements. The second exception probably has no application for community associations.

We recommend personal contact to ask for permission to enter if you can (email or phone), sending notice of any required entry by mail to the owner and also posting the notice on the door of the property.

¹ Old Act: RCW 64.32.050(6) (Common areas and facilities) provides:

The Association of [unit] owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each [unit] from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another [unit] or [units].

New Act: RCW 64.34.328(1) (Upkeep of condominium) provides in relevant part:

Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes.

² HOAs: RCW 64.38.020 ("Unless otherwise provided in the governing documents, an association may... (6) Regulate the use, maintenance, repair, replacement, and modification of common areas...")

³ The Old Act does go further than the New Act in that it specifies that "reasonable" entails "reasonable hours" of the day.

⁴ RCW 59.18 (Residential Landlord-Tenant Act).

⁵ RCW 59.18.150(1) (Landlord's right of entry — Purposes — Searches by fire officials...) provides, in relevant part:

The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to . . . make necessary or agreed repairs, alterations, or improvements . . .

⁶ *Henry v. Henry*, 2001 Wn. App. LEXIS 411, *12 (Wash. Ct. App. Mar. 13, 2001) (tenant alleged the landlord entered the premises without notice several times, but the court affirmed the trial court's holding that the facts presented by the tenant were insufficient to find for the tenant).

⁷ RCW 59.18.150(6) (Landlord's right of entry...) provides:

The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry.

⁸ RCW 59.18.150(5) (Landlord's right of entry ...) provides: "The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment."

⁹ RCW 59.18.150(4)(a) (Landlord's right of entry...) provides: "A judge must issue a search warrant before the official may enter the premises."