

## **Restrictions on Use: What percentage of owners must approve a rental restriction in a condominium?**

For New Act condo Associations, state law requires that 90% of owners (and every affected owner) vote for a restriction on use.<sup>1</sup> The Washington State Supreme Court, in *Filmore LLLP v. Unit Owners Ass'n of Centre Pointe Condo*, recently classified a rental restriction as a restriction on use.<sup>2</sup> Failure to get the required vote makes the restriction invalid and unenforceable.

For Old Act condo Associations, state law only requires that 60% of owners consent to any change in restrictions on use, including rental restrictions (though individual declarations may require a greater percentage).<sup>3</sup>

The Washington Supreme Court's ruling in *Filmore* was very narrow. The Court specifically stated that its decision did not address the interpretation of "restrictions on use" from the statute and based its decision only on the interpretation of Centre Pointe's Declaration.

The *Filmore* decision left several unanswered questions. The court did not address the language requiring approval of "each unit particularly affected," which could, in effect, require approval of 100% of an Association's unit owners. The court also failed to address whether leasing-related requirements other than pure rental caps constitute use restrictions, and whether rental restrictions adopted more than one year ago would be void.<sup>4</sup> We continue to advise that New Act condos must obtain approval from 90% of the owners to adopt a valid rental cap.

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<sup>1</sup> RCW 64.34.264(4) (Amendment of declaration) (“[N]o amendment may . . . change . . . the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the Association are allocated other than the declarant or such larger percentage as the declaration provides.”).

<sup>2</sup> See, *Filmore LLLP v. Unit Owners Ass’n of Centre Pointe Condo.*, 2015 Wash. LEXIS 949 (court affirmed the appellate court’s ruling that a lease restriction via declaration amendment for the Centre Pointe community requires a 90 percent vote because RCW 64.34.264(4) requires a 90% vote for restrictions on use), and this Declaration defined “use” to include rental restrictions.

<sup>3</sup> Washington courts have not considered this issue for Old Act condo Associations. See RCW 64.32.090(13) (Contents of Declaration) (“[N]ot less than sixty percent of the apartment owners shall consent to any amendment . . .”).

<sup>4</sup> Subsequent case law seems to indicate that RCW 64.34.264(2), the one-year statute of limitations, would not save these amendments. See chapter entitled: “Statute of Limitations: How long after an amendment is recorded can it be challenged successfully?”