

## CondoLaw's 2018 Handbook for Community Associations

# 1--What Basic Legal Concepts and Information Should I Keep in Mind While Reading this Book?

Before you start reading this book, it is important for you to be familiar with some basic concepts about the types of communities that exist and the law which governs them. Often this book will address condominiums and HOAs separately and may refer to these communities collectively as common interest communities. There are four major sets of laws which cover common interest communities. WUCIOA (RCW 64.90) is the most recent of the laws. It applies to all new common interest communities and went into effect on July 1, 2018. Condominiums formed before July 1, 2018 are covered by either the New Act (RCW 64.34) or the Old Act (RCW 64.32). HOAs formed before July 1, 2018 will be governed by the HOA Act (RCW 64.38). Additionally, many Associations are organized as nonprofit corporations and therefore will be covered by either the Nonprofit Corporations Act (RCW 24.03) or the Nonprofit Miscellaneous and Mutual Corporations Act (RCW 24.06)

### **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, along with the entire physical entity. The Association of Owners is the legal entity that

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manages the affairs of the condominium and its Owners. Usually, the Association itself owns no property. Common elements, even a manager apartment, are 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. 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, not individual Owners.

Often, outside managers are hired by the Board to assist with the administration and management of the Association and the physical property. 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.

### **HOAs**

Many residential developments that are not condominiums are governed as "Homeowners' Associations" or "HOAs." Most are platted communities of single family homes or Lots. 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. 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

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reference to some other recorded document, like Covenants, Conditions, and Restrictions (CC&Rs) or a Declaration.

### **Cooperatives**

These are buildings owned by a single corporation which pays all the real estate taxes and expenses. Each shareholder is entitled to lease an apartment.

### **Common Interest Community**

The term "common interest community" is the general term used to refer to this constellation of communities including HOAs, condominiums, or cooperatives which had previously been treated separately by the law. More formally, a common interest community is real estate described in a Declaration, in which a person may own a Unit, and as a result the Owner is obligated to pay a share of the expenses and costs of the community. But, at its heart, a common interest community is nothing new. It is just another way to refer to your condominium, cooperative, or HOA. This general term is necessary because WUCIOA creates a single set of laws which will govern these different types of communities. All of these communities have common interest ownership of some part of the property.

### **Which Laws Apply?**

Associations of Owners of property formed before July 1, 2018, and that are not condos or co-ops are governed by the Homeowners' Association Act (Chapter 64.38 of the Revised Code of Washington (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.

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Condos and their Owners' Associations created on or after July 1, 1990, (meaning the Declaration was recorded on or after that date) but before July 1, 2018, are governed by the Washington Condominium Act, RCW 64.34 (the "New Act"). It is now 27 years old but is still "new" compared to the prior statute.

Condos and their Associations created before July 1, 1990 are mostly 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 restrictive of the two Acts 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.

Cooperatives created prior to July 1, 2018, where each Owner is a shareholder in the corporation, are governed by corporate law. Which one will depend on the statute under which the corporation was formed. In addition, because each shareholder leases their home, the Landlord Tenant Act, RCW 59.18, may apply.

Any common interest community (whether a condominium or an HOA) created after July 1, 2018 is governed by the Washington Uniform Common Interest Ownership Act. Some provisions introduced by WUCIOA automatically extend to preexisting communities, and there are some provisions that a community may choose to adopt by amending their Declaration. There is also a process for a preexisting community to change their Governing Statute to WUCIOA. There are several benefits to adopting WUCIOA, but the decision should be made with the assistance of an attorney and after a conversation with your members.