

13--Does a Person Need to Be an Owner to Serve on the Board?

Washington law allows non-Owners to serve on an Association's Board. However, an Association is free to prevent non-Owners from serving on the Board by including qualifications in its Governing Documents that Board Members must be Owners.¹

Similarly, Washington law does not prohibit more than one Owner per Unit or Lot from serving on an Association's Board, so in theory a Board could include two members from the same Unit or Lot. However, this may be undesirable since it would give members with identical interests in the Association a disproportionate amount of control over the community. Due to this concern, an Association could draft its Governing Documents to limit one person per Unit or Lot to serving on the Board.

Most Associations in Washington are incorporated under the Nonprofit Corporation Acts.² 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.³

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.⁴ 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,

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any person who is a partner, director, or officer in an entity that owns a home is able to serve on the Board.

WUCIOA adopts the same language as found in the New Act at RCW 64.34.324(3).⁵ Therefore, under WUCIOA a “unit owner” may include partners, directors or officers of an entity that owns a Unit. However, the community may modify the definition of “unit owner” in their Declaration.

¹ RCW 64.34.324(1) (Bylaws) provides:

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;

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;

The Old Act is silent on qualifications for Board members.

² 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.

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.

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³ RCW 64.34.324(3) (Bylaws) provides:

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.

⁴ See RCW 64.38.030.

⁵ RCW 64.90.410(2)

...the board must be comprised of at least three members, at least a majority of whom must be unit owners. However, the number of board members need not exceed the number of units then in the common interest community...

(d) In determining the qualifications of any officer or board member of the association, "unit owner" includes, unless the declaration or organizational documents provide otherwise, any board member, officer, member, partner, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner.

(e) Any officer or board member of the association who would not be eligible to serve as such if he or she were not a board member, officer, partner in, or trustee of such a person is disqualified from continuing in office if he or she ceases to have any such affiliation with that person or that person would have been disqualified from continuing in such office as a natural person.