

18--How does a Community Delegate Powers to a Committee?

Washington law permits communities to create committees and delegate powers to them. For communities not governed by WUCIOA, committee member may be appointed by either the Board or the Governing Documents. WUCIOA only permits the Board to appoint committee members. Board created committees must be composed of two or more Board Members. WUCIOA permits the creation of advisory committees which are not staffed by Board Members, but they are not authorized to exercise Board powers. Decisions made by improperly constituted committees may be invalid.

The Condominium Act and Homeowners' Associations Act
The *Horizontal Property Regimes Act*, *Condominium Act*, and *Homeowners' Associations Act* do not mention the formation of Board committees. Instead, the Governing Documents, *Washington Nonprofit Corporation Act*, RCW 24.03, and *Nonprofit Miscellaneous and Mutual Corporations Act*, RCW 24.06, govern the creation of committees. RCW 24.03 permits a community to create two types of committees: member committees and Board committees.¹ Member committees are created through the Governing Documents. It is not necessary for Board Members to be seated on a properly constituted member committee. Board committees also must be authorized by the Governing Documents. If so authorized, a majority of the Board may create and appoint a committee with the power to act on behalf of the Board. The committee must consist of at least two Board Members. The statutes limit what powers the Board may delegate to a committee.² The Governing Documents may place further restrictions on the Board's power to create committees and appoint members. RCW 24.06 also authorizes Board committees.³

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Board committees must be composed of two or more Board Members. As demonstrated in *Harstene Pointe Maintenance Ass'n v. Diehl*, failure to satisfy this requirement renders the committee's decisions invalid.⁴ In *Diehl*, an Architectural Control Committee denied an Owner's request to cut down a tree. The Owner cut down the tree anyway, and the committee fined him. The committee only contained one Board Member at the time it denied the request. The court held that because the committee was improperly composed under Washington law its denial of the Owner's request was invalid.

The courts do not require member committees to be composed of Board Members. In *Canterwood Homeowners Association v. Hill Design and Construction, Inc.*,⁵ the Court of Appeals permitted the community to enforce decisions made by its Architectural Control Committee even though it was not staffed by Board Members.⁶ This ruling upheld the distinction between Board committees and member committees. It reasoned that because the committee was formed through the Governing Documents, without the participation of the Board, it was a member committee authorized by 24.03.065 and not controlled by *Diehl*.

The Washington Uniform Common Interest Ownership Act WUCIOA, RCW 64.90, does not defer to 24.03 or 24.06 but directly controls the formation of committees.⁷ It provides that the Governing Documents may instruct the Board to create a committee or otherwise outline the rules for the formation and appointment of committee members. However, WUCIOA, exclusively reserves for the Board the power to appoint members to a committee. The committee also must consist of at least two Board Members and only those Board Members may have voting power for the committee.

While WUCIOA does not permit for the formation of a member committee, it does allow for the creation of an advisory committee.

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The advisory committee does not have to contain any Board Members, but it also does not have any powers. Instead, the advisory committee may advise the Board on specific issues facing the community. Therefore, the Governing Documents may direct the Board to create advisory committees devoted towards studying issues such as landscaping, social, parking, etc. The advisory committee may brief the Board on these issues and suggest appropriate actions to the Board. The Board may then, at its discretion, make decisions based on the advisory committee's recommendations. If a Board committee is improperly constituted, it will be treated as an advisory committee.

¹ *Members—Member Committees*, RCW 24.06.065(2) (“A corporation may have one or more member committees. The creation, makeup, authority, and operating procedures of any member committee or committees must be addressed in the corporation’s articles of incorporation or by laws.

Committees, RCW 24.03.115 (“If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation...”)

² RCW 24.03.115 (“...no such committee shall have the authority of the board of directors in reference to amending, altering, or repealing the bylaws; electing, appointing, or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee...”)

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RCW 24.03.145 (“...no such committee shall have the authority of the board of directors in reference to:

(1) Amending, altering, or repealing the bylaws; (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation; (3) Amending the articles of incorporation; (4) Adopting a plan of merger or a plan of consolidation with another corporation; (5) Authorizing the sale, lease, exchange, or mortgage, of all or substantially all of the property and assets of the corporation; (6) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; or (7) Amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

³ *Committees*, RCW 24.06.145 (“If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation...”)

⁴ 95 Wash.App. 399 (1999).

⁵ 133 Wash.App. 1001 (2006).

⁶ *Id.* at *2 (“RCW 24.03.115 does not apply to committees designated and appointed by a nonprofit corporation’s articles of incorporation or membership.”)

⁷ *Board Members, Officers, and Committees*, RCW 64.90.410. (“...all committees of the association must be appointed by the board. Committees authorized to exercise any power reserved to the board must include at least two board members who have exclusive voting power for that committee. Committees that are not so composed may not exercise the authority of the board and are advisory only.)