27--What Statutes of Limitation are Applicable to Common Legal Disputes?

A court will examine the specific facts of a case before it determines what statute of limitation applies. Some common statutes of limitation are: one year to challenge the validity of a Declaration amendment; ten years to defend against adverse possession; six years for written contract claims; three years for claims on oral contracts and tort claims; and two years for claims not otherwise specified by law. Associations have either three years or six years to bring a collections action, depending on the Governing Statute. Some Declarations contain specific limitations on actions against Owners, often in relation to Architectural Control. It is difficult to make a general statement as to what statute of limitation will apply to any given case. A lawyer must examine the facts of the case to properly advise your Association.

Validity of an Amendment to the Governing Documents

Both *the Washington Condominium Act*[1] and *The Washington Uniform Common Interest Ownership Act*[2] ("WUCIOA") contain provisions which require any "challenge to the validity of an amendment by the association" to be brought within one year from when the amendment is recorded. However, the one-year time bar does not apply for fraudulent amendments.[3] When fraud is not present the failure to adhere to the proper amendment process renders the amendment voidable, but any challenge must be brought within one year.[4] WUCIOA only provides one year to challenge an amendment so long as there is no evidence of fraud.

Limitations on Actions Contained in the Declaration

An Association may lose their right to bring an enforcement action if they fail to bring suit within the timeframe contained in the

Governing Documents. In an unpublished case, *Flying H Ranch Homeowners Association v. Geary*,[5] the Governing Documents stated that the Homeowners' Association must sue to stop an Owners' improper construction prior to the completion of the construction. The court found that the Association waived its right to bring an enforcement action against the Owner by waiting until construction had been completed. The court's determination was based solely on Association's obligations under the Declaration. The case suggests that the Governing Documents may reduce the time frame the Association has to bring an enforcement action against an Owner. This case is unpublished, decided on poorly worded conflicting documents, and legal reasoning which is questionable, but does demonstrate the risk that valid claims can be lost if the time in the Declaration is ignored.

Actions to Recover Real Property

A claim to recover real property has a statute of limitations of 10 years.[6] *Shoah Highlands, Inc. v. Dougherty*,[7] a case out of Florida provides an illustration of how this type of action might occur. In that case, an Owner built an enclosure on common property. Another Owner objected and sued to have the enclosure removed. The court found that the claim could give rise to both a cause of action for the recovery of real property and to enforce a contract. The court found that the plaintiff's contract claim was time barred, but the lawsuit to recover real property was timely. So, to prevent adverse possession, you must sue before ten years are up, and to sue to confirm adverse possession, you must wait more than ten years.

Contractual Obligations

Claims on contracts that are not in writing must be brought within three years.[8] An agreement will be considered an oral contract subject to a three-year statute of limitation if the essential elements of the agreement are not in writing.[9] Washington courts do not require that the essential elements be contained within one signed document. In one case, the court found that the reports,

plans and invoices provided by an inspector were sufficient to establish a written contract, subject to the six-year statute of limitations, between an inspector and a condominium developer.[10]

Under Washington law, the Declaration is not a contract.[11] Courts have, at times, treated the Declaration as "[a]kin to a master deed."[12] Courts apply the six-year statute of limitation found at RCW 4.16.040 to suits to enforce the express and implied obligations in a deed.[13] Whether RCW 4.16.040 applies to a Declaration is not directly addressed by the courts, but they would likely apply the six year statute of limitation.

Tort Actions

An Association may be sued for property damage and personal injuries which arise due to the Association's failure to maintain or repair common areas. Under Washington law, actions for personal injury must be brought within three years.[14] Often these suits arise in the context of a slip and fall in the common areas of a condominium building.[15] However, the duty to maintain and repair common elements can lead to liability under other fact patterns.

For instance, in *Siu v. West Green Condominium Ass'n,*[16] the Washington Court of Appeals permitted a suit for personal injuries and property damage resulting from a fire which started in a Unit Owner's apartment. The fire started when the tenant left a pot of grease boiling on the stove. The fire injured the Owner of an adjoining Unit. Fire alarms did not provide warning. The alarms were hardwired and the wiring was a common element. A question of fact existed as to whether the Owner of the Unit where the fire started had tampered with the wires. The court found that even if the wires had been tampered with, the Association may have still have had a duty to inspect and repair the wiring.

A lawsuit may implicate both contract and tort claims. The determining question is whether the injury can be traced to the breach of both a written obligation and a separate and

independent legal duty.[17] In their Governing Documents, Associations frequently promise to maintain the common areas. Even without these promises, an Association may have an independent duty to exercise reasonable care to protect against dangers the Association knows of or should have discovered.[18] This duty may require the Association to remedy or warn of the danger.[19] If an Owner is injured as a result of the Association's failure to maintain, the Owner may allege two claims: one based on the failure to perform obligations in the Governing Documents, and another based on the Association's breach of its duty of care. The courts may allow a lawsuit which was not brought within the three-year statute of limitation for tort claims to proceed within the six-year statute of limitation applicable to written agreements.

Actions Not Otherwise Provided For By Statute

If a Washington court finds that the claim is not provided for by statute it will apply a two-year statute of limitation.[20] In a case from New York, *Stein v. Garfield Regency Condominium*[21] the court was unable to classify the plaintiff's cause of action. The case involved a lawsuit brought to declare that the roof area above an apartment was a limited common element, an injunction preventing the construction of any structures on this portion of the roof, and an order voiding a recent amendment of the Declaration. The court determined that New York law did not provide a specific limitation period for these claims. If such a claim had been brought in Washington, it would have defaulted to a two-year limit.

Collections Actions

Associations also have a limited time to bring collection actions against Unit Owners. The period in which the Association must bring a collection action is outlined in the Governing Statutes. Under the *Washington Condominium Act*, the Association has three years from when an assessment becomes due to bring a collection proceeding.[22] This provision covers both Old Act and New Act condominiums.[23] Homeowners' Associations have six years to initiate a collection action. For communities organized

under WUCIOA, proceedings to collect assessments must be brought within six years after the assessment becomes due.[24]

We believe monetary claims related to assessments against an Association by an Owner would mirror the timelines for assessment recovery by the Association.

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[1] RCW 64.34.264(2). ("No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.")

[2] SSB 6175 § 218(2). ("In the absence of fraud, any action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is recorded.")

[3] *Club Envy of Spokane, LLC v. Ridpath Tower Condominium Assoc.*, 184 Wash.App. 593 (Wash. Ct. App. 2014). (The court determined that the amendment could be challenged at any time because it had not been properly adopted pursuant to RCW 64.34.264, and was therefore void.)

[4] *Bilanko v. Barclay Court Owners Ass'n*, 185 Wash.2d 443 (2016). (Distinguishing *Club Envy*, court held that, unlike in *Club Envy*, there was no evidence of fraud only rendered the improperly passed amendment to be voidable and barred the challenge because it had not been brought within the statute of limitation.)

[5] 153 Wash.App. 1009 (Wash. Ct. App. 2009).

[6] RCW 4.16.020. ("The period prescribed for the commencement of actions shall be…Within ten years…For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.")

[7] 837 So.2d 579 (2009).

[8] RCW 4.16.080(3). ("The following actions shall be commenced within three years…an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument…")

[9] *Grand View Homes LLC v. Cascade Testing Laboratory, Inc.* 146 Wash.App. 1044 at *3 (Wash. Ct. App. 2008). ("If a material element of a written contract must be proved by extrinsic evidence, the contract is partly oral and the three-year statute of limitations applies.")

[10] *Id*. at * 5. ("Because the ex parte writings contain all the essential elements of a written contract between Cascade and Grand View, the six-year statute of limitations governs and Grand View's breach of contract claim is not barred.")

[11] *See, Lake v. Woodcreek Homeowners Association*, 169 Wash.2d 516, (2010).

[12] *Id*. at 521. "Akin to a master deed, a declaration describes the condominium property and contains the covenants defining the property rights and legal obligations of the property owner.")

[13] *See*, *Foley v. Smith*, 14 Wash.App. 285 (Wash. Ct. App. 1975). ("The six year statute of limitations on the covenants of warranty and quiet enjoyment in a deed did not commence to run until the specific performance decree evicting the covenantors and covenantees had become final…It was, therefore, not barred by RCW 4.16.040.")

[14] RCW 4.16.080(2). ("The following actions shall be commenced within three years… An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated…"

[15] *See*, *Garron v. Pier Point Condominiums*, 151 Wash.App. 1030 (Wash. Ct. App. 2009). (Injured worker hired by a unit owner to clean the unit sued association for personal injuries which she claimed resulted from wet tiles on a walkway that the association knew about but failed to repair.")

[16] 123 Wash. App. 1012 (Wash. App. Ct. 2004).

[17] *Eastwood v. Horse Harbor Foundation, Inc.* 170 Wash.2d 380 ("The test is not simply whether an injury is an economic loss arising from a breach of contract, but rather whether the injury is traceable also to a breach of tort law duty of care arising independently of the contract.")

[18] *See*, *Garron*, 151 Wash.App. 1030 at *3. ("The Association is liable to an invitee for dangerous condition of the common areas if the Association: (a) knows or by the exercise of reasonable care would

discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (be should expect that they will not discover or realize the danger or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.")

[19] *Id*.

[20] RCW 4.16.130. ("An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.")

[21] 886 N.Y.S.2d 54 (N.Y. App. Div. 2009).

[22] RCW 64.34.364(8). ("A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.")

[23] RCW 64.34.010 ("RCW 64.34.364 (lien for assessments)… to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.")

[24] RCW64.690.485(9) ("A lien for unpaid assessments and the personal liability for payment of those assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the full amount of the assessments sought to be recovered becomes due.")