

30--Does WUCIOA Eliminate Restrictions on Assessments in an HOA's CC&Rs?

We believe that section 64.90.525 of the Washington Uniform Common Interest Ownership Act¹ ("WUCIOA") eliminates any restriction on assessment increases within the CC&Rs of an existing HOA (but not condominiums). Our legal argument is strongest in cases of a special assessment. However, the argument applies to dues increases contained within the regular budget. The argument works best if the Association can demonstrate that the restrictions are out of date and do not reflect the current financial needs of the community, and statutory obligations imposed after the CC&Rs were recorded.

RCW 64.90.525 applies to all existing HOAs and establishes the process for ratifying a budget and the accompanying assessments. RCW 64.90.525 provides that a proposed budget is approved unless a majority of Owners (or a larger number if required by the Declaration) reject the budget.² A restriction on dues increases conflicts with the budget and assessment provisions as drafted by the Washington State legislature. The statute allows the current Owners to serve as the arbiters of whether the proposed budget and assessments are reasonable.

RCW 64.90.525 represents an evolution of the budget approval process found in the HOA Act.³ Like WUCIOA, the HOA Act allows a majority of Owners to block the budget proposed by the Board and allows for the approval of the budget without the participation of a Quorum of the Owners. In most respects WUCIOA proscribes the same budgeting process as the HOA Act, except as it comes to special assessments. The HOA Act does not directly address the Board's power to pass a special assessment. WUCIOA changes this and expressly gives the

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Board the right to levy a special assessment if ratified by the Owners.⁴ This change indicates that the legislature wanted to protect the power of the Board to raise funds for the community.

RCW 64.90.525 overrides the CC&Rs of an HOA because of section 64.90.080 of WUCIOA⁵. To protect the public interest the legislature chose to supersede the existing provision of an HOA's Governing Documents with RCW 64.90.525.⁶ Where provisions within the HOA's Governing Documents differ from RCW 64.90.525, they will be wiped out and RCW 64.90.525 will replace the existing provisions. This particular section does not apply to condominiums and is not contained within the model legislation that served as the inspiration for WUCIOA. These facts suggest that the legislature was particularly concerned with an HOA's ability to adopt a realistic budget, and an acknowledgement that many existing CC&Rs prohibited Boards from doing so.

The argument is strongest when the Board seeks to raise funds through a special assessment because RCW 64.90.525 specifically empowers the Board to propose a special assessment and ratify it through the new statutory budget process.⁷ Any provisions that limit the Board's power to levy a special assessment would necessarily conflict with RCW 64.90.525. As a result, the provisions would be superseded⁸ to ensure the Board could propose a special assessment as it saw fit, subject only to the obligation to hold a meeting to allow Owners to vote it down.

A large dues increase could invite a legal challenge by an Owner. There is less risk of a legal challenge if the restrictions are stale and hinder the management of the property. Owners are also less likely to challenge assessment increases if they are applied over time, rather than in one large jump. We are confident that our interpretation of WUCIOA will be upheld by the courts. However, nothing in this chapter or book can be considered legal advice. The budget process and the validity of any assessment will depend on a number of factors. We would need to review your

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Governing Documents and understand the needs of your community before we could provide a specific legal opinion.

¹ RCW 64.90.525

- (1)(a) Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. Unless at that meeting the unit owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget and the assessments against the units included in the budget are ratified, whether or not a quorum is present.
- (b) If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget proposed by the board.
- (2) The budget must include:
- (a) The projected income to the association by category;
 - (b) The projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category;
 - (c) The amount of the assessments per unit and the date the assessments are due;
 - (d) The current amount of regular assessments budgeted for contribution to the reserve account;
 - (e) A statement of whether the association has a reserve study that meets the requirements of section 331 of this act and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and
 - (f) The current deficiency or surplus in reserve funding expressed on a per unit basis.
- (3) The board, at any time, may propose a special assessment. The assessment is effective only if the board follows the procedures for ratification of a budget described in subsection (1) of this section and the unit owners do not reject the proposed assessment. The board may provide that the special assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.

² RCW 64.90.525(1)(a).

³ RCW 64.38.025(3) (Which no longer applies to budgets) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a

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meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

⁴ RCW 64.90.525(3) “(The board, at any time, may propose a special assessment. The assessment is effective only if the board follows the procedures for ratification of a budget described in subsection (1) of this section and the unit owners do not reject the proposed assessment. The board may provide that the special assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.”)

⁵ RCW 64.90.080.

(1) Except for a nonresidential common interest community described in RCW 64.90.100, RCW 64.90.095 and 64.90.525 apply, and any inconsistent provisions of chapter 59.18, 64.32, 64.34, or 64.38 RCW do not apply, to a common interest community created in this state before July 1, 2018.

(2) Except to the extent provided in this subsection, the sections listed in subsection (1) of this section apply only to events and circumstances occurring after July 1, 2018, and do not invalidate existing provisions of the governing documents of those common interest communities. **To protect the public interest, RCW 64.90.095 and 64.90.525 supersede existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter 64.38 RCW.**

⁶ RCW 64.90.080(2). (“To protect the public interest...RCW 64.90.525 supersede[s] existing provisions of the governing documents...”)

⁷ RCW 64.90.525(3). (“The board, at any time, may propose a special assessment.”)

⁸ Supersede means to cause to be set aside, or to take the place or position of. *Meriam-Webster*, <https://www.merriam-webster.com>