

34--Can Associations Borrow Money?

Associations are permitted to borrow money, but this power is subject to any limitations in the Declaration.¹ Most Associations do not own property and can only secure a loan by assigning their right to collect future income as collateral. The power to borrow money does not mean the Association can assign its right to future income to a lender. WUCIOA communities are permitted to assign their right to collect future income by statute.² Secured loans under this statute must follow special approval processes.³ Condominium Associations may only assign their right to collect future income if specifically provided for in the Declaration. The HOA Act is silent about the ability to assign future income.

Associations are permitted to borrow money. For all common interest communities organized under Washington law, the Governing Statutes authorize the Association to borrow money under the broad power granted to corporations in this state. The Declaration may limit the Association's power to borrow money. But having the corporate authority to borrow is different than having the authority to create collateral sufficient for a bank to loan the Association money.

Most lending institutions will not lend money without receiving some form of security on the loan. Most Associations do not own property in the community, and therefore cannot use it to secure a loan. Instead, the Association must secure its loan by assigning its right to future income. By assigning this right to the bank, the bank gains the right to collect the community's assessments if the Association fails to pay back the loan. The ability to assign the right to future income is not included in the authorization to borrow money and must be authorized separately by statutory provisions or the Governing Documents.

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For Old and New Act condominiums, an Association may assign its rights to future income if the Declaration permits it. ⁴ These communities cannot assign their right to collect future interests unless the Declaration expressly authorizes it. WUCIOA allows communities under its governance to assign their right but requires special Owners' ratification. The HOA Act is silent. So, for an HOA to borrow may be mostly dependent on the bank's terms and an attorney's willingness to declare in a legal opinion that the HOA has the authority to perform that contract.

Under WUCIOA, Owners must ratify a loan secured through the right to collect a future interest. The Board must provide notice of the intent to borrow to all Unit Owners. In the notice the Board must describe: 1) the purpose of the loan and how the money will be spent; 2) the amount, term, and interest rate of the loan; 3) the amount and term of any assessments required to repay the loan; and 4) the date of the Owners meeting at which the loan may be ratified. The date of the meeting must be between 14 and 60 days after the mailing of the notice. The loan will be ratified unless a majority of votes in the Association (or more if required by the Declaration) reject the proposal to borrow funds.

The best practice is to conduct proper Reserve Studies as required by law and collect a sufficient reserve fund to avoid the need to borrow. This process will save money as the community will not need to pay interest (and will actually earn interest) on the money in the reserve fund. It is also considered fair to Owners, as it spreads the costs out over time and ensures that the Owners who actually caused the wear to the common elements are the ones paying for their repair. If a community has not maintained sufficient reserves, they can instead consider a lump sum special assessment. This may place a burden on current Owners that may not be viewed as fair, but it will save the community money by avoiding the interest payments on the loan. If a community considers a loan, it should also consider levying a special assessment to reduce or eliminate a loan.

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¹ RCW 64.34.304(1). (“...subject to the provisions of the declaration, the association may...(e) Make contracts and incur liabilities...”)

RCW 64.38.020(5). (“Unless otherwise provided in the governing documents, an association may...make contracts and incur liabilities...”)

RCW 64.90.530(2). (“...subject to the provisions of the declaration, the association may...(e) make contracts and incur liabilities subject to subsection 4 of this section...”)

² 64.34.304(1)(n). (“...the association may...Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides...”)

64.90.405(2)(p). (“...the association may...subject to subsection (4) of this section, assign its right to future income, including the right to receive assessments...”)

³ RCW 64.90.405

- (4) Any borrowing by an association that is to be secured by an assignment of the association's right to receive future income pursuant to subsection (2)(e) and (p) of this section requires ratification by the unit owners as provided in this subsection.
- (a) The board must provide notice of the intent to borrow to all unit owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.
 - (b) In the notice, the board must set a date for a meeting of the unit owners, which must not be less than fourteen and no more than sixty days after mailing of the notice, to consider ratification of the borrowing.
 - (c) Unless at that meeting, whether or not a quorum is present, unit owners holding a majority of the votes in the association or any larger percentage specified in the declaration reject the proposal to borrow funds, the association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

⁴ RCW 64.34.304(n). (“Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides...”)