

6--How Does a Community Adopt WUCIOA?

For currently existing condos, co-ops, and HOAs, there is a process to adopt the Washington Uniform Common Interest Ownership Act ("WUCIOA").¹ First the Owners must vote to amend the Declaration and choose to be governed by WUCIOA. Second, the Board must vote to amend the Declaration to remove provisions which directly conflict with WUCIOA. Finally, the Owners can vote to adopt optional WUCIOA provisions, and delete or change non-conflicting provisions in the Declaration.

1. Switch the communities Governing Statute to WUCIOA. This process is outlined in RCW 64.90.095.² To make this change:
 - a) The Board must prepare an amendment to the Declaration and send it to all the Owners. This is a short document.
 - b) The Board must wait 30 or more days then hold an Association meeting on the amendment.
 - c) Next, the Board must set a deadline for the Owners to complete voting and send the Owners the final proposed amendment with a ballot for their vote.
 - d) The amendment will pass if at least 30% of the Owners vote and 67% of votes approve.
 - e) The amendment is effective when recorded.

2. Bring the Declaration in line with the provisions of WUCIOA as instructed by RCW 64.90.285(11)(d)³. To do so the Board must:
 - a) Draft a Declaration amendment to delete and replace provisions which conflict with WUCIOA.⁴
 - b) Send the amendment to the Owners along with notice that in 30 or more days an Association meeting will be held.
 - c) The Owners must have an opportunity to comment on the amendment at this meeting.

CondoLaw's 2018 Handbook for Community Associations

- d) The amendment may then be approved by two-thirds of the Board.⁵
 - e) The amendment is effective when recorded.
3. Adopt the optional WUCIOA provisions and remove old Declaration provisions not in conflict with WUCIOA. This step is not mandatory but allows the Association to:
- a) Remove Declarant rights, and Declarant control references;
 - b) Consolidate governance issues in the Bylaws;
 - c) allocate expenses against the Units which benefit from those expenses;⁶
 - d) assess the HOA insurance deductible to Unit Owners;⁷ and
 - e) assess expenses to a Unit for their or their guest's ordinary negligence.⁸

To make these changes, the Association must amend the Declaration by following the steps in the statute. ⁹ These changes will be effective when recorded.

¹ RCW 64.90.080

(1) Except for a nonresidential common interest community described in section 121 of this act, sections 120 and 326 of this act 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 the effective date of this section.

(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 the effective date of this section and do not invalidate existing provisions of the governing documents of those common interest communities. To protect the public interest, sections 120 and 326 of this act supersede existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter 64.38 RCW.

² RCW 64.90.095(3):

(1) The declaration of any common interest community created before the effective date of this section may be amended to provide that this chapter will apply to the common interest community, regardless of what applicable law provided before this act was adopted.

CondoLaw's 2018 Handbook for Community Associations

(2) Except as provided otherwise in subsection (3) of this section or in section 218 (9), (10), or (11) of this act, an amendment to the governing documents authorized under this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments and in conformity with the amendment procedures of this chapter. If the governing documents do not contain provisions authorizing amendment, the amendment procedures of this chapter apply. If an amendment grants to a person a right, power, or privilege permitted under this chapter, any correlative obligation, liability, or restriction in this chapter also applies to the person.

(3) Notwithstanding any provision in the governing documents of a common interest community that govern the procedures and requirements for amending the governing documents, an amendment under subsection (1) of this section may be made as follows:

(a) The board shall propose such amendment to the owners if the board deems it appropriate or if owners holding twenty percent or more of the votes in the association request such an amendment in writing to the board;

(b) Upon satisfaction of the foregoing requirements, the board shall prepare a proposed amendment and shall provide the owners with a notice in a record containing the proposed amendment and at least thirty days' advance notice of a meeting to discuss the proposed amendment;

(c) Following such meeting, the board shall provide the owners with a notice in a record containing the proposed amendment and a ballot to approve or reject the amendment;

(d) The amendment shall be deemed approved if owners holding at least thirty percent of the votes in the association participate in the voting process, and at least sixty-seven percent of the votes cast by participating owners are in favor of the proposed amendment.

³ RCW 64.90.285(11) "Upon thirty-day advance notice to unit owners, the association may, upon a vote of two-thirds of the members of the board, without a vote of the unit owners, adopt, execute, and record an amendment to the declaration for the following purposes:...(d) To remove any other language and otherwise amend as necessary to effect the removal of language purporting to limit the rights of the association or its unit owners in direct conflict with this chapter."

⁴ This will be a large amendment and we advise the board to work with an attorney to make this second amendment.

⁵ The board is not required to provide the owners with an opportunity vote.

⁶ RCW 64.90.480(4):

CondoLaw's 2018 Handbook for Community Associations

The declaration may provide that any of the following expenses of the association must be assessed against the units on some basis other than common expense liability. If and to the extent the declaration so provides, the association must assess:

- (a) Expenses associated with the operation, maintenance, repair, or replacement of any specified limited common element against the units to which that limited common element is assigned, equally or in any other proportion that the declaration provides;
- (b) Expenses specified in the declaration as benefiting fewer than all of the units or their unit owners exclusively against the units benefited in proportion to their common expense liability or in any other proportion that the declaration provides...

⁷ RCW 64.90.480 (8) In the event of a loss or damage to a unit that would be covered by the association's property insurance policy, excluding policies for earthquake, flood, or similar losses that have higher than standard deductibles, but that is within the deductible under that policy and if the declaration so provides, the association may assess the amount of the loss up to the deductible against that unit.

⁸ RCW 64.90.480 (6) "To the extent that any expense of the association is caused by willful misconduct or gross negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, even if the association maintains insurance with respect to that damage or common expense;" and WUCIOA, SSB 6175 § 317(7) "If the declaration so provides, to the extent that any expense of the association is caused by the negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, to the extent of the association's deductible and any expenses not covered under an insurance policy issued to the association."

⁹ RCW 64.90.285

(1)(a) ...the declaration may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, unless the declaration specifies a different percentage not to exceed ninety percent for all amendments or for specific subjects of amendment. For purposes of this section, "amendment" means any change to the declaration, including adding, removing, or modifying restrictions contained in a declaration.