

# HOA MINI REPORT

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*A quarterly newsletter providing legal news and analysis of interest to homeowners associations in Eastern Washington. Please contact me at [nick@gnbergh.com](mailto:nick@gnbergh.com) with any comments or suggestions. If you would prefer not to receive this newsletter, please let me know. Back issues of the HOA Mini Report are available at my website.*



So nice to have a break from the heat and smoke! As always, I have a favor to ask. Postage for this newsletter is expensive and handling is time consuming. If you provide me with your email address, I will send future issues to you by email, rather than by US mail. I will not share your email address with others.

**WUCIOA** Effective July 1, the Washington Uniform Common Interest Ownership Act (Chapter 64.90 RCW) joins the Horizontal Property Regimes Act (Chapter 64.32 RCW), the Condominium Act (Chapter 64.34 RCW) and Homeowners Association Act (Chapter 64.38 RCW). The Homeowners Association Act governs all platted developments with common areas. The Horizontal Property Regimes Act governs condominiums created before July 1, 1990. The Condominium Act governs condominiums created between July 1, 1990 and June 30, 2018, although some of its provisions apply to condominiums governed by the Horizontal Property Regimes Act. The WUCIOA applies to all common interest communities created after June 30, 2018, including condominiums, cooperatives and platted developments. While existing HOAs and condominiums may elect to be governed by the WUCIOA, such common interest communities governed by the prior laws are not affected by the new law, with one exception.

The WUCIOA is modeled on the Uniform Common Interest Ownership Act, drafted by the National Uniform Law Commission, an organization that prepares model laws intended "to bring clarity and stability to critical areas of state statutory law." The most widely known effort of the Commission is the Uniform Commercial Code, which has been adopted by all 50 states. Washington is the 12th state to adopt a version of the UCIOA.

The WUCIOA carries over many provisions of the prior acts, although it contains more detail than the prior laws in its 134 pages. Significant changes to developments governed by the WUCIOA include:

- a requirement that all developers of common interest communities provide prospective purchasers with a public offering statement containing a general description of the development, a schedule for completion of any incomplete improvements, a copy of the declaration, bylaws, any community rules, and an estimate of any assessments due at closing. A purchaser may withdraw from a purchase for seven days after the offering statement is provided. Formerly, only condominium developments governed by the Condominium Act were required to provide public offering statements.
- assessment liens of all common interest communities are given a limited priority over mortgages and some other liens, to the extent of six months of assessments. Formerly, only condominium developments governed by the Condominium Act had priority over mortgages and other liens. Attorney fees in collection actions included in the assessment lien and thus prior to mortgages, are limited to the lesser of the amount owed or \$2000, an amount that, in many cases, will not be adequate to cover collection costs.
- cooperatives, which have been largely unregulated, are now subject to the WUCIOA.
- all subdivisions are subject to the WUCIOA, except those (i) with fewer than 12 lots, (ii) not subject to future development rights and (iii) with annual assessments less than \$300.

As mentioned above, one section of the WUCIOA is applicable to all common interest communities, even those existing before the effective date of July 1, 2018:

**RCW 64.90.525 Budgets—Assessments—Special assessments.**

**(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 RCW 64.90.550 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.**

Subsection 1(a) fixes the problem created by the *Sudden Valley* decision (discussed in HOA Mini Reports for July and October 2014 and July 2017), which required a second vote on increased assessments even after approval of a budget based on those assessments, if the declaration had different approval thresholds for budgets and assessment increases.

While the new WUCIOA has minimal impact on existing developments, it will significantly impact developments created after its effective date, particularly given its expanded coverage to formerly exempt subdivisions and the limitation on recoverable fees in collection actions. Even though the new act may reduce uncertainty in some areas, I think it is unlikely that many existing common interest communities will avail themselves of the option to be governed by the new law.

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This newsletter is not a substitute for legal advice. Legal counsel should be consulted for advice applicable to your particular situation.

Nick Bergh has practiced law in Washington for over thirty years, primarily handling real estate and business matters. Nick is available to provide a full range of legal services to association boards, including enforcement of covenants, collection of delinquent assessments, interpretation and amendment of governing documents, governance, and guidance regarding applicable laws. Nick works collaboratively with clients to formulate and achieve goals appropriate to each situation, and strives to be responsive and efficient in providing legal services. If you would like to retain Nick as counsel, he can be reached at:

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