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NO. 70013-8-I

[In the Washington Court of Appeals, Division I]

THE SUPREME COURT
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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FILMORE LLLP, a Washington limited liability limited partnership,

Plaintiff/Respondent,

v.

UNIT OWNERS ASSOCIATION OF CENTRE
POINTE CONDOMINIUM, a Washington
nonprofit miscellaneous corporation,

Defendant/Petitioner.

**PETITION BY APPELLANT UNIT OWNERS ASSOCIATION OF
CENTRE POINTE CONDOMINIUM TO THE WASHINGTON
SUPREME COURT FOR DISCRETIONARY REVIEW**

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I. Identity of the Petitioner

The Petitioner is the Unit Owners Association of Centre Pointe Condominium (the “Association”), the appellant/defendant below.

II. Underlying Decision

The Association requests discretionary review of the decision herein filed September 2, 2014 by the Court of Appeals Division I.¹

III. Issue Presented for Review

Does an amendment to a declaration of condominium that creates a “rental cap” on the number of units that owners can lease to tenants require 67% supermajority approval by owners under RCW 64.34.264(1)? Or does the higher 90% approval requirement contained in RCW 64.34.264(4) (and a like percentage stated in a provision of the declaration of condominium that mirrors .264(4)’s statutory language) apply to such an amendment?

IV. Statement of the Case

Centre Pointe Condominium was formed in May 2003 by a Declaration of Condominium recorded in Whatcom County.² Clerks Papers (“CP”) 30, 104. Three residential buildings with 97 units and a clubhouse were built prior to 2011. CP 106. On October 20, 2011, the Association recorded the 12th Amendment to the declaration of

¹ See copy attached in Appendix 1 (“App. 1”). The decision below, which is published, held that 90% approval, not 67%, is required for a condominium owners association governed by the Washington Condominium Act, RCW chap. 64.34 (the “WCA”) to pass a “rental cap” amendment to its declaration of condominium.

² The governing legislation for Centre Pointe Condominium is the WCA, which applies to condominiums formed after July 1, 1990. See RCW 64.34.010(1).

condominium. CP 123-27.³ The amendment was passed pursuant to RCW 64.34.264(1) and §17.1 of the declaration. CP 68, 124. It was approved by owners of units to which at least 67% of the votes in the association were allocated, which is the required level under RCW 64.34.264(1) and §17.1. CP 68, 124, 234-35. The 12th Amendment created a “rental cap,” stating that no more than 30% of the total number of units could be leased, subject to limited exceptions. CP 125.

Ms. Debbie Haddad, the President of the Association when Filmore filed this lawsuit, stated the Association’s purposes in adopting the 12th Amendment, CP 234-35, which included that ability of the members of the Association to sell their units depends upon the availability of FHA financing to prospective buyers, and that the FHA and lenders have guidelines under which the availability of financing is decreased or nonexistent if there is extensive leasing. CP 234.

Respondent Filmore LLLP (“Filmore”) acquired the Building D pad and development right from a bank that had foreclosed on a prior declarant’s interest. CP 105, 142. On December 27, 2011, two months after the 12th Amendment’s recording, Filmore pledged the property to secure construction financing. CP 145. On September 28, 2012,

³ The decision below stated correctly October 2011 as the month of recording of the 12th Amendment, App. 1 at 4. The references in two other passages to “2012” as the year of its passage, *id.* at 2, 18, are not correct.

Filmore, as successor declarant, recorded the 14th Amendment to the declaration, CP 104-07, which created 35 residential units in Building D. On October 15, 2012, Filmore filed its Complaint herein, alleging that adoption of the 12th Amendment violated RCW 64.34.264(4) and Section 17.3 in the Declaration. CP 4-10. Subsection (4) in RCW 64.34.264 states five exceptions to the general requirement that 67% of unit owners approve amendments to the declaration, and requires 90% approval for such exceptional amendments.⁴ Filmore obtained a CR 56 order on February 8, 2013 declaring the 12th Amendment “void.” CP 349. All 35 units in Building D have been rented, with no sales yet made by Filmore. The condominium does not presently have FHA financing certification.

“Rental cap” amendments to condominium declarations have been commonly, indeed predominantly, adopted by a 67% approval level. During the 36 months before the 12th Amendment took effect in October 2011 to 12 months after, there were at least ten “rental cap” amendments for condominiums (besides Centre Pointe’s) recorded in Whatcom County that were approved by a 67% level under RCW 64.34.264(1). CP 260-61, 159, 163-221. Three of these other ten were drafted by an attorney with the firm representing Filmore, CP 261, 159, 164, 176, 204,

⁴ Section 17.3 of the declaration of condominium quotes the language of RCW 64.34.264(4) almost verbatim, imposing the same requirement. CP 69.

who supported Filmore's CR 56 motion with a declaration, CP 27.⁵

V. **Authority and Argument**

A. **The Issue Presented Is of Substantial Public Interest**

RAP 13.4(b)(4) states the following criterion for acceptance of discretionary review by the Washington Supreme Court:

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The present case involves an issue of high public interest. In particular:

- No prior appellate decisions address whether 67% or 90% approval is required under the WCA for a rental cap amendment.
- A large preponderance of rental cap amendments under the WCA have been approved by 67%, not 90%, and are now subject to being invalidated under the decision below.
- The interpretation of "use" in the decision below means that in subsection .264(4), the fifth and last clause has extremely broad reach and blurry boundaries – in contrast to the narrow scope of the other four clauses; indeed the fifth clause will eclipse the 67% baseline in .264(1).
- Pre-1990 condominiums governed by the Horizontal Property Regimes Act, RCW ch. 64.32 ("HPRA"), can be amended by a 60% supermajority

⁵ Filmore submitted two "rental cap" amendments in Whatcom County, from 2007 and 2010, which it stated were passed by a 90% vote. CP 306-09, 310-13.

pass a rental cap amendment to the declaration. Anomalously, a wide disparity therefore exists between pre-1990 and post-1990 condominiums in their ability to have rental caps, if the decision below stands, even though the legislature in enacting the WCA evidenced no intent to alter the fundamental principle of the condominium form of ownership:

Because condominiums are statutory creations, the rights and duties of condominium owners are not the same as real property owners at common law. “Central to the concept of condominium ownership is the principle that each owner, in exchange for the benefits of association with other owners, ‘must give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property.’ ” [Brackets by Court.]

Shorewood West Condo. Ass’n v. Sadri, 140 Wn.2d 47, 53, 992 P.2d 1008 (2000) (citations omitted). The importance of the issue in this case is such that it should be determined by Washington’s highest court.

The WCA states 67% is the required approval level for amendments to a condominium declaration generally:

(1) Except ... as limited by subsection (4) of this section, the declaration, including the survey maps and plans, 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, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units **are restricted exclusively to nonresidential use.**

RCW 64.34.264(1) (boldface and italics added). Five exceptional types

of amendments require a 90% level of approval and, further, approval “of the owner of each unit particularly affected”:

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may **create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted**, in the absence of the **vote or agreement of the owner of each unit particularly affected** and the owners of units to which at least **ninety percent of the votes** in the association are allocated other than the declarant or such larger percentage as the declaration provides.

RCW 64.34.264(4) (boldface and italics added).

The WCA does not define “use.” Well-established principles of statutory construction demonstrate, however, that the fifth clause of subsection .264(4) does not apply to a rental cap amendment.

Filmore’s position has been that “use” of a unit does not mean the basic function or activity that goes on in it – *i.e.*, residing in it or, alternatively, carrying on a business or commerce. Instead, Filmore has argued “use” includes a lease by an owner to a tenant because, at common law, “one of the ‘sticks in the bundle’ of real property rights” is the ability to transfer possession in exchange for rents. CP 23. The Association disagrees. The correct meaning is that regardless of whether an owner or a tenant lives in a unit, the “use” is the same — residential; and regardless of whether an owner or tenant carries on a retail or

commercial business in the unit, the “use” is nonresidential.⁶

This is an issue of first impression and one exceedingly important to condominium owners’ associations. Faced with the large number of associations having rental cap amendments passed by 67%, Filmore offered this explanation in an attorney declaration:

For practical reasons, it is very difficult for a homeowners’ association to obtain the ninety percent (90%) vote from the owners for anything. This is particularly true with rental restrictions since many unit owners do not want such restrictions imposed on their units.

It is typical to advise associations that the Act appears to require ninety percent (90%) (because rental restrictions are a restriction on use), but that no court has made a decision on the point. This allows counsel to advise clients that the actual requirement is not an absolute certainty. Further, boards are advised that a claim of invalid adoption must be brought within one year of adoption (RCW 64.34.264(2)). Accordingly, boards are advised that to achieve a rental restriction, the board could undertake passage at sixty-seven percent (67%) assuming the risk that no one would file within the one year time period. Upon this advice, it does appear that many boards do take the risk and pass amendments with the lower sixty-seven percent (67%). [CP 304]

The attorney’s assumption that the one year time period in RCW 64.34.264(2) will accord such across-the-board protection to amendments

⁶ Land use codes define “use” by reference to the activity in or on the property. *See King County, Dept. of Development & Environmental Services v. King County*, 177 Wn.2d 636, 641, 305 P.3d 240 (2013) (“The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained,” citing the county code); *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 210, 810 P.2d 31 (1991) (“‘Use’ means . . . the type of activity . . . to which land is devoted or may be devoted” (ellipses by the court and citing county code)).

passed by 67% is questionable. The argument that such amendments are void *ab initio* is an obstacle.⁷ Additionally, going forward (if the decision below stands), condominium associations in order to pass a new rental cap amendment will need at least 90% approval – and possibly 100% in light of the “agreement of ... each unit particularly affected” phrase.⁸

B. Well Established Rules of Statutory Construction Show “Use” in the WCA Does Not Mean Leasing

The “fundamental objective in construing a statute is to ascertain and carry out the intent of the legislature.” *Federal Way School Dist. No. 210 v. Vinson*, 172 Wn.2d 756, 765, 261 P.3d 145 (2011). Furthermore,

“We construe the meaning of a statute by reading it in its entirety, and considering the entire sequence of all statutes relating to the same subject matter.”

Id. (citation omitted); *see also Rivas v. Overlake Hosp. Med. Ctr.*, 164

⁷ The argument asserts that passage of an amendment with less than the required statutory percentage of votes means it was not “adopted ... pursuant to this section,” as that phrase is used in RCW 64.34.264(2), as contrasted with a procedural irregularity inconsistent with a non-statutory directive, *e.g.*, a bylaw. The Supreme Court in Rhode Island, which has a one year statute of limitations identical to RCW 64.34.264(2), has held that the limitations period did not apply to a “void *ab initio*” challenge in a case involving an amendment that expanded special declarant rights. *See American Condo. Ass’n, Inc. v. IDC, Inc.*, 844 A.2d 117, 133 (2004). The Washington Court of Appeals in *Keller v. Sixty-01 Ass’n of Apartment Owners*, 127 Wn. App. 614, 620-21, 112 P.3d 544 (2005), distinguished between amendments that are “void” and those that are “merely voidable,” and suggested (in a passage regarding proceedings on remand) that only the latter type would be protected by the running of an applicable statute of limitations. (The amendment in *Keller* changed the allocation of common expenses. The condominium predated the passage of the WCA and thus it was not subsection .264(2) that potentially provided a limitations period, 127 Wn. App. at 621, but rather RCW chap. 4.16.)

⁸ Filmore’s position has been that 100% of the votes are required to approve a rental cap amendment because each unit owner’s ability to lease is affected. CP 25.

Wn.2d 261, 266-67, 189 P.3d 753 (2008).⁹ By this principle, the phrase “uses to which any unit is restricted,” which appears in .264(4), means a **restriction based on a land use classification, in particular residential or nonresidential**, such as those restrictions appearing in numerous WCA statutes listed below.¹⁰ As is stated in *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 528-29, 243 P.3d 1283 (2010) (boldface added):

Usually, the intended meaning is apparent from the surrounding context.

Here, we look to the **context of the other provisions** of the HPRA.

“When the same words are used in related statutes, we must presume the legislature intended the words to have the same meaning.” *Cclipse v. Michels Const., Inc.*, 154 Wn. App. 573, 579, 225 P.3d 492 (2010).¹¹

Looking to such “other provisions” in the WCA, two sections state the disclosures required of the declarant to purchasers and the

⁹ See also *City of Auburn v. Gauntt*, 174 Wn.2d 321, 274 P.3d 1033 (2012) (“When interpreting statutes, we do not read words in isolation[, but] we read words within the context of the whole statute and larger statutory scheme”); *In re Estate of Blessing*, 174 Wn.2d 228, 231, 273 P.3d 975 (2012) (“Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions and the statutory scheme as a whole”).

¹⁰ Virtually identical language appears in a rental cap amendment passed by a 67% vote, CP 181, drafted by an attorney in the firm that represents Filmore herein.

¹¹ See also *State v. Gonzalez*, 168 Wn.2d 256, 264, 226 P.3d 131, 135 (2010) (“[w]hen similar words are used in different parts of a statute, ‘the meaning is presumed to be the same throughout’”); *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 53-54, 266 P.3d 211 (2011) (same).

required content of a declaration, respectively. As to the first:

(1) A public offering statement shall contain the following information:

...

(g) A brief description of the permitted **uses and use restrictions** pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the **renting or leasing** of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

RCW 64.34.410(1)(g), (h) (boldface added). As to the second,

(1) The declaration for a condominium must contain:

...

(n) Any restrictions in the declaration on **use, occupancy, or alienation** of the units;

RCW 64.34.216(1)(n) (boldface added). Both provisions show “use” has a different meaning than “leasing.” The first has separate subparts for the two terms. In the second three different words, “use,” “occupancy” and “alienation,” list the “restrictions” to be stated. A “well-settled principle of statutory construction is that ‘each word of a statute is to be accorded meaning.’” *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (“[t]he drafters of legislation ... are presumed to have used no superfluous words”). Limits on the right to lease, to sublease, or to

assign a leasehold are a restriction on “alienation.”¹²

The conclusion that “use” does not include “leasing” is reinforced by reviewing the other instances in the WCA where the word “use[s]” appears in the statutory text, with particular focus on where the word appears in conjunction with “units.” **In 13 WCA sections, the word “residential” or “nonresidential” appears immediately before “use[s].”** One is in the statute at issue, RCW 64.34.264, in the proviso at the end of .264(1), *see supra* at 6. The other 12 are:

64.34.216(1)(e) (“nonresidential use”)	64.34.415(2) (“residential use”)
64.34.268(1) (“nonresidential uses”)	64.34.440(2) (both appear)
64.34.348(1) (“nonresidential uses”)	64.34.440(6)(f)(i) (“residential use”)
64.34.352(8) (“nonresidential use”)	64.34.445(3) (“residential use”)
64.34.380(4) (“nonresidential use”)	64.34.450(1) (“nonresidential use”)
64.34.400(1) (“nonresidential use”)	64.34.450(2) (“residential use”)

Throughout the WCA, repeatedly, the context in which “use[s]” appears is immediately next to “residential” or “nonresidential.” And, in particular, for eight of these 13, the entire phrase “unit[s] . . . restricted . . . to . . . use[s]” appears, with “residential” or “nonresidential”

¹² *See Shoemaker v. Shaug*, 5 Wn. App. 700, 701 & 704, 490 P.2d 439 (1971) (addressing a covenant precluding subleasing of premises); *Ernst Home Center, Inc. v. Sato*, 80 Wn. App. 473, 476 & 486, 910 P.2d 486 (1996) (same), citing *Restatement (Second) of Property, Landlord and Tenant* § 15.2; *see also Shorewood West Condominium Ass’n v. Sadri*, 92 Wn. App. 752, 759, 966 P.2d 372 (1998) (observing “[r]estrictions on leasing have been upheld as reasonable restraints on alienation”), *rev’d on other grounds*, 140 Wn.2d 47, 992 P.2d 1008 (2000); W. Stoebuck & J. Weaver, 17 Wash. Prac., *Real Estate: Property Law* §1.26 (discussing restrictions on subleasing as a type of restraint on alienation, a type that is usually found lawful). The decision below stated that “th[e] question” of whether “leasing restrictions are a restraint on alienation rather than a restraint on use, . . . remains unsettled.” App. 1 at 11.

appearing immediately before “use[s].”¹³ Thus, the context provided by the many sections of the WCA where “use” appears, and especially those sections that pertain to “units,” is compelling. It shows that the word means “nonresidential” uses on the one hand, *viz.*, retail or commercial, and “residential” uses on the other, such as dwelling or recreation.¹⁴

C. The Interpretation of “Use” Cannot Be So Broad that Subsection (4) Would Apply Indiscriminately

The conclusion above, on the statutory meaning of “use” in “change ... the uses to which any unit is restricted,” harmonizes with a conspicuous and important characteristic of RCW 64.34.264(4): it states with particularity the four other exceptional types of amendments for which the extraordinary 90% approval level is required. These are amendments to “create or increase special declarant rights, increase the number of units, change the boundaries of any unit, [or] the allocated interests of a unit.” *Id.* All have a narrow scope. So also should the clause at issue have a definite meaning, and not one so amorphous as to

¹³ These eight entries are §64.34.264(1) along with the six in the left-hand column of the above chart, and the second appearance of “use” in § 64.34.440(2). Three of the eight, like § 64.34.264(4), relate to voting percentages. *See* §§ 64.34.264(1), .268(1), .348(1).

¹⁴ The word “use[]” appears in several additional sections of the WCA, mostly in connection with the common elements or condominiums generally. While the context thus differs, the guidance available from these sections also supports that the word refers to activity in or on property, and not the transfer by lease of a right of possession. *See* Petitioner’s Opening Brief filed in the Court of Appeals at 14-17 (discussing 13 additional statutory sections including those not already listed *supra* that are cited in App. 1 at 12-13).

make it indeterminable how far the 90% requirement reaches. Interpreting disputed legislative language in harmony with the adjacent terms in the statute is a well-recognized principle:

A principle consistent with this view [of avoiding the “dismembering” of statutory terms] is that of *noscitur a sociis*, which provides that a single word in a statute should not be read in isolation, and that the meaning of words may be indicated or controlled by those with which they are associated. In *Jackson*, we applied this principle and held that the word “shelter” in the phrase “food, water, shelter, clothing and medically necessary health care,” should not be isolated and analyzed apart from the words surrounding it. In interpreting statutory terms, a court should take into consideration the meaning naturally attaching to them from the context, and . . . adopt the sense of the words which best harmonizes with the context.

Roggenkamp, 153 Wn.2d at 623 (citation omitted; ellipsis by the court).¹⁵

In contrast, the core of Filmore’s argument has been the contention that “[u]se’ must include all aspects to which a buyer may intend and/or expect to utilize his/her unit.”¹⁶ Filmore’s interpretation, pushing all limits of malleability, is such that RCW 64.34.264(4) would engulf the general rule. Virtually every declaration amendment that in some way relates to units would become a “use” restriction and require

¹⁵ See also *In re Guardianship of Knutson*, 160 Wn. App. 854, 867-68, 250 P.3d 1072 (2011) (“[t]he *maxim noscitur a sociis*, that a word is known by the company it keeps, is often wisely applied where a word is capable of many meanings to avoid the giving of unintended breadth to the Acts of Congress”).

¹⁶ Respondent’s Answer to Appellant’s Motion for Discretionary Review, filed April 25, 2013 in the court below (“Resp. Ans.”), at 9.

90% approval. The argument admits no basis to discern what would not be a “use.” Subsection (1) in RCW 64.34.264, stating the baseline argument of 67% approval for a declaration amendment, would become virtually superfluous and a central tenet of condominium ownership law, see *supra* at 5, would become meaningless.

Filmore has in a similar vein asserted that “[u]se’ under its ordinary definition is exceedingly broad.” Resp. Ans. at 11-12. Filmore submitted several pages from the *American Heritage Dictionary of English Language* and *Black’s Law Dictionary* (5th ed. 1979). CP 283-88. Filmore did not quote or cite any actual definition for the word. Rather, it said “[t]he breadth of the common meaning of ‘use’ is obvious, and must include rentals,” CP 275, relying, it appears, on the sheer number and length of the dictionaries’ multiple entries for the word. The method is reductionist in the extreme, to a level that would trump any other argument and require no statutory construction at all.¹⁷

This gets to a central shortcoming in the decision below. The

¹⁷ The court “may” look to a dictionary definition, but is not required to resort to one. See *Mains Farm Homeowners Ass’n v. Worthington*, 121 Wn.2d 810, 817, 854 P.2d 1072 (1993) (dictionary definitions not helpful on the word “family”); see also *In re Blessing*, 174 Wn.2d at 231-32. The pages Filmore put in the record, CP 283-88, are not particularly edifying. However, to the extent guidance can be gleaned, the *American Heritage Dictionary*’s leading definitions of the noun “use” would indicate the word denotes a function of an activity with the tangible object at issue. See definitions nos. 1, 2, at CP 284: (“—*n.* (yoos). **1. a.** The act of using; the application or employment of something for some purpose: *the use of a pencil for writing.* **b.** The condition or fact of being used. **2.** The manner of using; usage: *the proper use of power tools. . .*”).

reasoning by which that decision held leasing to be a “use” is unmoored to any principle that limits how far the word reaches. The decision below dismisses this concern out of hand, saying: “[W]e express no opinion as to whether or to what extent other types of uses [than leasing] are subject to the 90% requirement.” App. 1 at 14, *see id.* at 7. So stating does not change the method that led to its holding. That method extends to much more than leasing unless in future cases on other amendments affecting units it is curtailed *ad hoc*. The decision below quoted two dictionary definitions, *id.* at 9-10, but gave no further explanation except to say that “[t]he plain meaning of ‘use’ as defined in the dictionary is broad.” *Id.* at 10.¹⁸ It then *de facto* placed the burden of “persua[sion]” on Petitioner to show “evidence” the legislature intended that leasing not be a “use.” *See* App. 1 at 11, 14 & 15. *See also id.* at 13 n.10.¹⁹ This method overlooks

¹⁸ Complete copies of the entries for “use” in these two dictionaries cited by the decision below are attached in Appendix 2 (WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002), pages 2523-24) and Appendix 3 (BLACK’S LAW DICTIONARY (9th ed. 2009), pages 1681-83). The two passages within these entries that the decision below selected and quoted are [from WEBSTER’S]: “ [T]he legal enjoyment of property that consists in its employment, occupation, exercise, or practice, a particular service or end: purpose, object, function, and the quality of being suitable for employment: capability of filling a need or promoting an advantage: usefulness, utility[;] ” and [from BLACK’S] “ ‘[t]he application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional.’ ” *See* App. 1 at 9-10.

These dictionary definitions do not preclude the meaning of “use” in RCW 64.34.264 argued by the Association herein, *see supra* at 9-12.

¹⁹ Such “evidence” exists in RCW 64.34.410(1)(g)(h), 64.34.216(1)(n), and the other statutes discussed *supra* at 10-12.

that consulting a dictionary is optional, not required, and should not be done when the dictionary definition is insufficiently definite to be applied.²⁰ It does not acknowledge any restraint on how far “use” extends since the rationale for the method, that the “meaning of ‘use’ as defined in the dictionary is broad,” knows no limits. The entire character of subsection .264(4) is changed as a result.

A non-exhaustive list of subjects that may now be considered a “use” would include displaying signs, keeping animals and parking, *see* App. 1 at 19 (citing paragraph titles in Article IX of the declaration of condominium), as well as maintaining or keeping security systems, private garden areas, antennas, storage spaces, and hazardous substances. All have sections in Article IX addressing them – the same Article that contained the § 9.1.14 on leasing that was altered by the 12th

²⁰ In *Mains Farm*, *supra* n. 17, the court observed:

No purpose will be served by examining and comparing in detail the numerous cases which define “family.” Because of the widely differing documents being interpreted, the contexts in which the word is used and the fact-specific circumstances, **it is impossible to arrive at a single, all-purpose definition.** The possible definitions range from limiting the “family” to the historical, traditional persons related by blood, marriage or adoption to “a group of people who live, sleep, cook, and eat upon the premises as a single housekeeping unit.”

Likewise, **attempting to use one of the many dictionary classifications solves nothing.** It has been observed:

First, although a group home may meet one of the dictionary definitions of “family,” **the focus must be on the contextual meaning of the word rather than the range of linguistically permissible meanings.** Second, the fact that a group home is set up to emulate family behavior should not be regarded as a sufficient condition for family status within the social meaning of a single-family-use covenant.

121 Wn.3d at 817 (boldface added, citations omitted).

Amendment.²¹ CP 53-55. There is not a principled way to distinguish these subjects from leasing if the foundation for interpreting “use” is that “as defined in the dictionary [it] is broad.” To require 90% approval – and 100% of all “affected” units – effectively means condominiums lack meaningful self-governance powers. It also creates the paradox that while an 80% supermajority vote would suffice to terminate a condominium, RCW 64.34.268(1), at least 90% would be required to amend the declaration’s provision on leasing, and, most likely, storage, parking, private garden areas, signs, security systems and hazardous substances.

D. The *Sadri* Decision, Interpreting the HPRA, Shows the Anomaly Created By the Decision Below

Each side argued the aspects of *Sadri, supra* at 5, that helped its position. The *Sadri* condominium was governed by the HPRA. 140 Wn.2d at 50. Its association amended a bylaw to create a rental cap. *Sadri* held an amendment to the declaration was required. *Id.* at 57.

²¹ Filmore argued that the declaration of condominium in its § 17.3 imposed a 90% supermajority requirement for an amendment of § 9.1.14 independent of how RCW 64.34.264(4) was interpreted, notwithstanding the nearly identical wording between subsection .264(4) and § 17.3 in the declaration. The decision below, however, agreed with Petitioner’s response that the meaning of § 17.3 was guided by the meaning of .264(4) in light of their parallel wording – *see Lake*, 169 Wn.2d at 530-31. App. 1 at 18. Nevertheless, since the decision below interpreted the statutory meaning of “use[]” broadly, the result is a holding by the Court of Appeals that Petitioner failed to comply with both statute and with its own Declaration of Condominium in the passage of the 12th Amendment. Further discussion of the defects in Filmore’s argument that the declaration’s § 17.3 can be interpreted independently of the statute .264(4) is contained in Opening Br. at 25-27 and Reply Br. at 7-9.

It was uncontested in *Sadri* that had an amendment to the declaration been pursued, 60% approval would have sufficed under the HPRA. *See id.*, citing RCW 64.32.090(13). A second key holding in *Sadri* is that a new rental cap, if created by an amendment to the declaration, applies to existing owners, not simply to future unit buyers. *Id.* The court relied on the fundamental principle of the condominium form of ownership – see quotation *supra* at 5 to reach this holding. *Id.* It rejected the “consumer” argument by the plaintiffs in the case – that they had purchased the unit relying on an ability to thereafter lease it – holding that the existing owners were on notice when they purchased that the declaration was subject to amendment.²²

Filmore pointed out that *Sadri* interpreted “use” in an HPRA subsection, RCW 64.32.090(7), as including leasing, and argued to extend this aspect of *Sadri* to the WCA. The subsection .090(7) required that the declaration contain “[a] statement of the purposes for which the building and each of the apartments are intended and restricted as to use.”

²² 140 Wn.2d at 51-52, 54. In the present case, Filmore argued that “consumer protection” is one of the purposes of the WCA (*see* its Article IV, RCW 64.34.400 through 64.34.465) and the 90% supermajority requirement in subsection (4) of RCW 64.34.264 should apply to a rental cap amendment so as to preserve the expectations of existing owners. The decision below appeared to agree. *See* App. 1 at 19. This is contrary to *Sadri*. Furthermore, Filmore is the successor declarant/developer – not an ordinary unit purchaser. Article IV of the WCA has the purpose of protecting ordinary purchasers from certain conduct of the declarant/developer. Furthermore, ordinary unit purchasers have legitimate interests in protecting their ability to sell their units (of which maintaining FHA certification is an important ingredient) and in the ability of the condominium owners association to reasonably exercise powers of self-governance.

It differs from the corresponding WCA section that states “Any restrictions in the declaration on **use, occupancy, or alienation** of the units” are required content. RCW 64.34.216(1)(n) (boldface added). *See supra* at 10. The *Sadri* parties appear not to have argued any rules of statutory construction. Instead, the association in *Sadri* contended:

The declaration is supposed to contain only the general outline of prohibitions with the specific prohibitions being contained in the bylaws and rules and regulations.

140 Wn.2d at 55. The *Sadri* court noted this was impeached by language in the declaration at issue, and ruled “use” in RCW 64.32.090(7) referred to “all uses and not just general categories of use such as residential use or commercial use. The provision requires that all restrictions on use should be in the declaration’s statement of purpose.” *Id.* at 56.

Petitioner respectfully disagrees that the “conclusion [of the decision below] is supported by ... *Sadri*.” App. 1 at 20. In the WCA, the word “use[s]” appears often. This is particularly so in sections relating to units, where consistently the word is preceded by “residential” or “nonresidential.” *See supra* at 10-12. In the HPR, “use” appears rarely and not at all near “residential” or “nonresidential.”²³ Equally as important, *Sadri* recognized the legitimacy of rental caps as an aspect of

²³ The sections in the HPR that contain the word “use[s]” are RCW 64.32.010 (1), (6), (10)-(11), (14); RCW 64.32.050 (4); RCW 64.32.090 (5), (7); RCW 64.32.100 (1); RCW 64.32.120 (3); RCW 64.32.180; and RCW 64.32.250 (1).

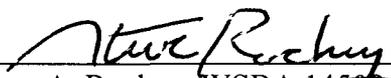
governance through a condominium association so long as the rental cap is contained in the declaration of condominium. The legislature did not intend to abandon that principle in enacting the WCA.

VI. Conclusion

The issue presented by this case is one of substantial public interest and importance. The decision below to interpret “use” in the WCA so broadly has a major impact on condominium owners associations in regard to rental cap amendments to declarations, passed by 67%, that have been made in the past and on all rental cap amendments that are pursued in the future, and it will impact other amendments affecting units that would now appear to require 90% approval because of the expansive and indeterminate reach it accorded to the fifth clause in RCW 64.34.264(4). The issue should be decided by the Supreme Court. The Association urges that the Court accept this petition for discretionary review.

RESPECTFULLY SUBMITTED on October 2, 2014.

ROCKEY STRATTON, P.S.



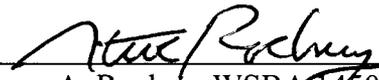
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that service of a copy of Petitioner's Motion for Discretionary Review to which this certificate of service is attached, and of the appendices to same attached below, is being made on the 2nd day of October, 2012, by (a) delivering via messenger a true copy thereof to the offices of the attorneys of record for plaintiff/respondent Filmore LLLP's and leaving it with the clerk therein, or a person apparently in charge thereof and (b) mailing same via the United States Postal Service to the same attorneys of record, first class postage prepaid.

DATED this 2nd day of October, 2014.

ROCKEY STRATTON, P.S.



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APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FILMORE LLLP, a Washington limited liability limited partnership,)	NO. 70013-8-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
UNIT OWNERS ASSOCIATION OF CENTRE POINTE CONDOMINIUM, a Washington nonprofit miscellaneous corporation,)	PUBLISHED OPINION
)	
Appellant.)	FILED: September 2, 2014
)	

LAU, J. — This appeal involves a dispute between the Unit Owners Association of Centre Pointe Condominium (Centre Pointe) and Filmore LLLP over the percentage of unit owner voter approval needed to pass declaration amendments restricting the leasing of units.¹ The parties disagree on the meaning of the word “use” in both the Centre Pointe condominium declaration and the Washington Condominium Act (WCA), chapter 64.34 RCW. Both of these require 90 percent voter approval for declaration amendments that change “the uses to which any unit is restricted.” RCW 64.34.264(4). On summary judgment, the trial court invalidated the declaration amendments passed by 67 percent of the unit owners voting because a restriction on leasing requires 90

¹ We use “lease” and “rent” interchangeably in this opinion.

percent approval. Because a restriction on the use of a unit encompasses leasing under the WCA and the original declaration, we affirm the order on summary judgment invalidating the Twelfth Amendment.

FACTS

The main facts are undisputed. Centre Pointe Condominium is a residential condominium complex in Bellingham, Washington. Its original condominium declaration was recorded in 2003. Centre Pointe is a multi-phased project with each phase consisting of a separate building of residential units. The first three phases (buildings A, B, and C) were constructed and their residential units sold prior to the filing of the complaint in this case. The fourth phase was created and defined as a separate "Development Unit D-3."

From 2003 until the summer of 2012, Article IX of Centre Pointe's condominium declaration governed permitted uses and lease restrictions.

Permitted Uses; Architectural Uniformity

9.1. Permitted Uses.

9.1.1. Residential Use.

Other than as provided in Section 9.1.2 hereof, the buildings and Units shall be used for residential purposes only, and for common social, recreational or other reasonable uses normally incident to such purposes. . . .

9.1.14. Lease Restrictions.

Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Instruments, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing and a copy of each lease must be supplied to the Association. No lease shall have a term of less than one year. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his or her Unit. Any tenant or subtenant of any portion of a Unit shall be deemed to have assumed all the responsibilities of an Owner under this Section of the Declaration.

(Emphasis added.)

Article XVII of the condominium declaration addresses amendment of the declaration.

17.1. Procedure for Amendment of Declaration

Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration which sets forth the entire amendment. . . . [Subject to certain exceptions], amendments may be adopted only at a meeting of the Owners if at least sixty-seven percent (67%) of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty-seven percent (67%) of the votes in the Association consent in writing to such amendment. . . .

17.3. Special Restrictions.

Except to the extent expressly permitted or required by other provisions of this Declaration, or of the Condominium Act, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and his or her Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant, and that percentage of Eligible Mortgagees and/or Eligible Insurers specified in Article XV above. No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration without the consent of the Declarant and any mortgagee of record with a security interest in the Special Declarant Right or in any real property subject thereto, excluding mortgagees of Units owned by persons other than the Declarant.

(Emphasis added.)

Article XVII mirrors the WCA's provisions for amendment of condominium declarations. Specifically, RCW 64.34.264, entitled "Amendment of declaration," provides in relevant part:

(1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, 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, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

.....
(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

.....
(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

(Emphasis added.)

Filmore LLLP is a Washington limited liability limited partnership. Filmore purchased Unit D-3 (subject of Centre Pointe's fourth development phase) in May 2011 after the bank foreclosed on a prior owner of the unit. After purchasing unit D-3, Filmore secured a commercial loan from Peoples Bank for over \$3.6 million to finance construction of new residential units. This loan was secured by a deed of trust on Unit D-3. In September 2012, the condominium documents were recorded to divide Unit D-3 into 35 individual residential units.

Meanwhile, in October 2011, after Filmore purchased Unit D-3 and before it recorded the condominium documents, Centre Pointe's unit owner's association (the Association)² adopted the Twelfth Amendment of the declaration. It amended section

² We refer to "the Association" and "Centre Pointe" interchangeably in this opinion.

9.1.14 quoted above “To instill limits on the total number of condominium units that can be rented or leased.”³ The amendment stated, “[P]ursuant to RCW 64.34.264 and Section 17.1 of the Declaration, the Declaration of this Condominium may be amended by the vote or agreement of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated” and declared that “the Association has obtained the necessary consent of the requisite percentage of Unit Owners prior to the date of this Amendment.”⁴ The amendment was recorded with the Whatcom County Auditor on October 20, 2011.

The Twelfth Amendment changed section 9.1.14 of the original declaration by imposing new restrictions, exemptions, classes of owners, and other details restricting all unit owners’ ability to lease their units. The changes include

- limiting leases to 30 percent of the total number of condominium units (section 9.1.14(b)(i));
- creating a distinction between “Owners” and “Investor-Owners” (section 9.1.14(b)(i)); (3) creating a hardship exemption to the leasing restriction granting the board of directors discretion to approve exemptions (section 9.1.14(b)(ii));
- creating an exemption for existing rentals based on grandfathering (section 9.1.14(b)(iii));

³ The Association’s immediate past president, Debbie Haddad, testified in her declaration that the Association’s purpose in adopting the Twelfth Amendment was to maintain market values of existing units and make it easier for owners to sell their units. She testified, “The FHA and lenders have guidelines under which their funds’ willingness to make or guarantee loans is decreased or nonexistent if there is extensive leasing at a condominium.”

⁴ Haddad testified in her declaration, “Through the Association’s management company, the proposed 12th amendment was submitted to the owners for a vote. It received a ‘yes’ vote from more than 67% of the voting interests in the condominium.”

- creating an exemption for rentals incident to bona fide sale of a unit (section 9.1.14(b)(iv));
- creating an exemption to the Association after foreclosure of an assessment lien and to institutional lenders after foreclosure of a first mortgage (section 9.1.14(b)(v));
- creating an exemption from the restriction if the lease is to immediate family members (section 9.1.14(b)(v)).

In October 2012, Filmore filed a complaint for “violation of statute, breach of declaration, declaratory action and damages.” (Capitalization omitted.) Filmore alleged that Centre Pointe’s adoption of the Twelfth Amendment violated the WCA and Centre Pointe’s condominium declaration. In January 2013, Filmore moved for summary judgment, requesting the court to conclude that the declaration’s Twelfth Amendment is void as a matter of law. In its memo supporting summary judgment, Filmore argued that lease restrictions constitute a restriction on “use” requiring a 90 percent approval vote under RCW 64.34.264(4) and the declaration.

On February 8, 2013, the trial court granted Filmore’s summary judgment motion. The court’s order states, “[T]he Twelfth Amendment to the Declaration is void and shall not be enforceable for lack of 90% voter approval.” Centre Pointe moved for RAP 2.3(b)(4) certification. The trial court certified one question for discretionary review.

[W]hether the Twelfth Amendment [to Centre Pointe’s declaration], which imposed a cap on the number of condominium units . . . that can be leased by owners to tenants, “changes . . . the uses to which a unit is restricted” and would therefore require approval by 90% or more of the voting power of the condominium owners’ association, rather than approval by 67% of such voting power, under the Washington Condominium Act, see RCW 64.34.264, and/or the [declaration].

See correspondence file (Appendix A to Centre Pointe’s motion for extension of time to file motion for discretionary review (trial court’s order granting Centre Pointe’s motion for

certification)). We granted Centre Pointe's motion for discretionary review on that limited issue. See correspondence file (ruling on discretionary review).⁵

ANALYSIS

Standard of Review

In this case we review a summary judgment order involving the interpretation of a statute and a condominium declaration. We review a summary judgment order de novo, engaging in the same inquiry as the trial court. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Summary judgment is warranted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Similarly, questions of statutory construction are reviewed de novo. State v. Votava, 149 Wn.2d 178, 183, 66 P.3d 1050 (2003). "A condominium declaration is like a deed, the review of which is a mixed question of law and fact." Lake, 169 Wn.2d at 526. The factual issue is the declarant's intent, which we discern from the face of the declaration; the declaration's legal consequences are questions of law we review de novo. Lake, 169 Wn.2d at 526.

Washington's Condominium Act

Washington's Condominium Act, chapter 64.34 RCW, was enacted in 1989 and governs all condominiums created after July 1, 1990 (including Centre Pointe). RCW 64.34.010. The WCA requires condominium declarations to contain certain elements such as the name of the condominium, a legal description of the real property included in the condominium, and, relevant to this case, "[a]ny restrictions in the declaration on

⁵ We do not address the meaning of "use" in the WCA or the declaration with respect to other activities or in other contexts.

use, occupancy, or alienation of the units.” RCW 64.34.216(1)(n). The declaration “may contain any other matters the declarant deems appropriate.” RCW 64.34.216(3).

Percentage Approval for Twelfth Amendment

The certified question in this case turns on whether the language “the uses to which any unit is restricted,” in RCW 64.34.264(4) and the Centre Pointe declaration encompasses leasing as a “use” of the property. Centre Pointe contends that “use” refers only to residential versus nonresidential. Thus, leasing restrictions are subject to a 67 percent vote, not 90 percent, because they are not restrictions on “use.” Filmore contends that leasing constitutes a “use” of the property. Thus, a lease restriction via declaration amendment requires a 90 percent vote.

“All condominiums are statutorily created.” Shorewood W. Condo. Ass’n v. Sadri, 140 Wn.2d 47, 52, 992 P.2d 1008 (2000). Because condominiums are creatures of statute, “the rights and duties of condominium unit owners are not the same as those of real property owners at common law.” Shorewood, 140 Wn.2d at 53.

The property rights that owners of individual condominium units have in the units are creations of the condominium statute and are subject to the statute, the declaration, the bylaws of the condominium association, and lawful amendments of the declaration and bylaws. An association may apply a restriction on leasing, if adopted in accordance with statute, to current owners.

Shorewood, 140 Wn.2d at 54 (emphasis added).⁶ We first consider whether the Association acted in accordance with the statute by adopting restrictions on leasing with 67 percent approval rather than 90 percent approval.

⁶ For this reason, we reject Filmore’s assertion that “this case can and should be decided upon the specific language of the Declaration, and not upon interpretation of the Act.” Resp’t’s Br. at 14.

When construing a statute, our goal is to determine and effectuate legislative intent. Swinomish Indian Tribal Cmty. v. Dep't of Ecology, 178 Wn.2d 571, 581, 311 P.3d 6 (2013). We give effect to the plain meaning of the language used as the embodiment of legislative intent. Swinomish, 178 Wn.2d at 581. "We determine plain meaning 'from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" Swinomish, 178 Wn.2d at 581 (internal quotation marks omitted) (quoting Trac-Fone Wireless, Inc. v. Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010)). We read the statute as a whole to give effect to all language used. In re Pers. Restraint of Skylstad, 160 Wn.2d 944, 948, 162 P.3d 413 (2007). "If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end."⁷ Lake, 169 Wn.2d at 526.

The term "use" is undefined in the WCA. "In the absence of a specific statutory definition, words in a statute are given their common law or ordinary meaning." State v. Chester, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997); see also Lake, 169 Wn.2d at 528. To determine the plain meaning of a term undefined by statute, the court first looks at the dictionary definition. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). The dictionary defines "use" as "the legal enjoyment of property that consists in its employment, occupation, exercise, or practice," "a particular service or end: purpose, object, function," and "the quality of being suitable for employment: capability of filling a need or promoting an advantage: usefulness, utility." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2523 (2002). "Use" is also defined as "[t]he application or

⁷ Neither party argues that the statute is ambiguous. Rather, they advance different unambiguous interpretations.

employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional.” BLACK’S LAW DICTIONARY 1681 (9th ed. 2009). The plain meaning of “use” as defined in the dictionary is broad.

Centre Pointe advances several arguments in support of its contention that the term “use” in RCW 64.34.264(4) excludes leasing. Despite surface appeal, Centre Pointe’s narrow and hypertechnical interpretation of the statute is unpersuasive.

First, Centre Pointe cites to a rental cap agreement for an unrelated condominium drafted by counsel different from the attorney who drafted the leasing restriction for Centre Pointe. That rental cap agreement states, “‘The uses to which any unit is restricted,’ as the phrase is used in Section 17.3 of the Declaration, means a restriction based on a land use classification of residential or non-residential” Centre Pointe contends that the above-quoted rental cap agreement accurately identifies the meaning of the word “use” in this case. But an attorney’s opinion as to the proper definition of “use” sheds no light on legislative intent.

Centre Pointe also points to two statutory provisions governing the disclosures required of the declarant to purchasers in the public offering statement and the required content of a declaration. RCW 64.34.410(1), which addresses condominium public offering statements, refers to use restrictions separately from leasing restrictions. It provides:

A public offering statement shall contain the following information:

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units.

RCW 64.34.410(1). And RCW 64.34.216(1)(n) provides, "The declaration for a condominium must contain . . . [a]ny restrictions in the declaration on use, occupancy, or alienation of the units. Centre Point contends that both provisions show that "use" has a different meaning than "leasing." However, neither statutory provision qualifies or limits the meaning of "use." Although Centre Pointe asserts that leasing restrictions are a restraint on alienation rather than a restraint on use, this question remains unsettled.⁸ We are not persuaded that these statutory provisions indicate a legislative intent to exclude leasing from the meaning of "use" in RCW 64.34.264(4).

Center Pointe also relies on several other WCA provisions in which "use" is qualified by "residential" or "nonresidential." Centre Pointe claims that these provisions

⁸ Sources differ on whether leasing restrictions are restrictions on use or alienation. See ZACHARY M. RAWLING, Reevaluating Leasing Restrictions in Community Associations: Rejecting Reasonableness in Favor of Consent, 5 J.L. Econ. & Pol'y 223, 232 (2009) (treating leasing restrictions as restrictions on alienation); Shorewood W. Condo. Ass'n v. Sadri, 92 Wn. App. 752, 759, 966 P.2d 372, rev'd, 140 Wn.2d 47, 992 P.2d 1008 (2000) (citing persuasive and foreign authority for the proposition that "[r]estrictions on leasing have been upheld as reasonable restraints on alienation") (but this language was not included in the Supreme Court's reversal of this decision in Shorewood); Breezy Point Holiday Harbor Lodge-Beechside Apt. Owners' Ass'n v. B.P. P'ship, 531 N.W. 2d 917, 919 (Minn. App. 1995) ("At least one other jurisdiction, however, has upheld a rental restriction as a valid restriction on the use of property and not a restraint on alienation."); Holiday Out in Am. at St. Lucie, Inc. v. Bowes, 285 So.2d 63, 64-65 (Fla. App. 1973) (provision granting condominium developer exclusive right to rent units and prohibiting other owners from such rentals upheld as valid restriction on use of units); ELIZABETH WILLIAMS, CAUSE OF ACTION TO ENFORCE, OR DECLARE INVALID, RESTRICTION ON USE OF CONDOMINIUM PROPERTY, 14 Causes of Action 2d 315, § 19 (2000) (citing cases for the principle that the power of alienation is only affected when an owner cannot convey title in absolute fee and that restriction on leasing affects only the use of units, not the right to alienate units). We need not decide whether leasing restrictions are restraints on alienation under Washington law.

show that the legislature intended “use” to refer only to the distinction between residential versus nonresidential uses throughout the entire statute.⁹ But RCW 64.34.264(4), which provides that 90 percent approval is required for declaration amendments that change “the uses to which any unit is restricted,” is not among the statutory provisions that qualify the word “uses” with “residential” or “nonresidential.” Other provisions in the WCA similarly refer to “use” without specifying residential or nonresidential. See RCW 64.34.443(1)(a) (any written affirmation of fact or promise “which relates to the unit, its use, or rights appurtenant thereto . . . or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise”) (emphasis added); RCW 64.34.443(1)(d) (“A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is

⁹ See RCW 64.34.216(1)(e) (“The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to nonresidential use”); RCW 64.34.264(1) (special provisions for “units . . . restricted exclusively to nonresidential use”); RCW 64.34.268(1) (special provisions for units “restricted exclusively to nonresidential uses”); RCW 64.34.348(1) (same); RCW 64.34.352(8) (special provisions if “all units of a condominium are restricted to nonresidential use”); RCW 64.34.380(4) (certain sections apply to condominiums “intended in whole or in part for residential purposes” and do not apply to condominiums “consisting solely of units that are restricted in the declaration to nonresidential use”); RCW 64.34.400(1) (exception for “those units that are restricted to nonresidential use in the declaration”); RCW 64.34.415(2) (section applies “only to condominiums containing units that may be occupied for residential use”); RCW 64.34.440(2) (referring to units “occupied for residential use” and excluding units that “will be restricted exclusively to nonresidential use”); RCW 64.34.440(6)(f)(i) (referring to work done to maintain the building or lot for “the residential use of the existing tenants”); RCW 64.34.445(3) (addressing warranties “to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law”); RCW 64.34.450(1), (2) (addressing warranties of quality for “units intended for nonresidential use” and “units intended for residential use”).

lawful.") (emphasis added); RCW 64.34.445(2) (declarant and dealer warrant that unit and common elements are "suitable for the ordinary uses of real estate of its type . . .") (emphasis added); RCW 64.34.445(3) (declarant and dealer warrant to purchaser of unit that may be used for residential use that "an existing use, continuation of which is contemplated by the parties, does not violate applicable law . . .") (emphasis added). As noted above, the legislature could have—but did not—define the term "use" in any form or context in the WCA.¹⁰

Our review of the WCA indicates that where the legislature used "residential" or "nonresidential" to describe the word "use," such reference relates to differences in requirements for notice, voting percentages, insurance, the public offering statement, warranties, and reserve accounts—all of which are reasonable distinctions to make given the WCA's strong emphasis on protecting residential buyers of condominiums.¹¹

¹⁰ Commentators have described the WCA as "precisely drafted."
18 WILLIAM B. STOEBCUK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE TRANSACTIONS § 12.4, at 29 (2d ed. 2004). Presumably the legislature's omission of a definition narrowing "use" to residential or nonresidential was intentional.

¹¹ See One Pac. Towers Homeowners' Ass'n v. HAL Real Estate Invs., Inc., 148 Wn.2d 319, 330-31, 61 P.3d 1094 (2002) (one of the main purposes of the WCA is to provide protection for condominium purchasers); Washington Condominium Act Official Comments to RCW 64.34.410 (comment 1) ("The best 'consumer protection' that the law can provide to any purchaser is to ensure that such purchaser has an opportunity to acquire an understanding of the nature of the products which it is purchasing."); Washington Condominium Act Official Comments to RCW 64.34.950 ("This Act should be construed in accordance with its underlying purpose of making uniform the law with respect to condominiums, as well as the purposes stated in the Prefatory Note of simplifying, clarifying, and modernizing the law of condominiums, promoting the interstate flow of funds to condominiums, and protecting consumers, purchasers and borrowers against condominium practices which may cause unreasonable risk of loss to them.").

Such distinctions do not necessarily mean the legislature intended the word “uses” in RCW 64.34.264(4) to refer solely to residential or nonresidential.

Center Pointe next contends that Filmore’s interpretation of the term “use” would make RCW 64.34.264(4) apply indiscriminately so that the 90 percent exception for “uses to which any unit is restricted” would swallow the general 67 percent rule for amendments to condominium declarations. We are not presented with that speculative circumstance here. As noted above, our resolution is limited to the certified question presented on discretionary review—whether the legislature intended to exclude leasing from those “uses to which any unit is restricted” in RCW 64.34.264(4). Accordingly, we express no opinion as to whether or to what extent other types of uses are subject to the 90 percent approval requirement.

In sum, we are not persuaded that the legislature intended to narrow the term “uses” in RCW 63.34.264(4) to solely residential versus nonresidential. This interpretation conflicts with common sense and the word’s plain meaning. See Prison Legal News, Inc. v. Dep’t of Corr., 154 Wn.2d 628, 637 n.7, 115 P.3d 316 (2005) (rejecting amicus brief argument that attempted to narrow definition beyond plain meaning of statutory term); Rettkowski v. Dep’t of Ecology, 128 Wn.2d 508, 515-16, 910 P.2d 462 (1996) (rejecting Department’s attempt to narrow the scope of a statute by reading the term “any” as a limiting word); Sacred Heart Med. Ctr. v. Dep’t of Revenue, 88 Wn. App. 632, 637-38, 946 P.2d 409 (1997) (rejecting Department’s overly narrow interpretation on ground it conflicted with statute’s plain meaning as derived from dictionary definition). “[A] statute which is clear on its face is not subject to judicial interpretation.” In re Marriage of Kovacs, 121 Wn.2d 795, 804, 854 P.2d 629 (1993).

The plain meaning of “use,” derived from the dictionary, undermines Centre Pointe’s arguments. “Undefined common statutory terms are given their common dictionary meanings unless there is strong evidence the legislature intended something else.” Michaels v. CH2M Hill, Inc., 171 Wn.2d 587, 601, 257 P.3d 532 (2011). Under the circumstances here, the common ordinary meaning of “use” applies because no evidence indicates the legislature intended something else.

Although we conclude that “the uses to which any unit is restricted” under RCW 64.34.264(4) unambiguously includes leasing, we also reviewed the available legislative history including the legislative bill reports, official comments to the WCA, the Uniform Common Interest Ownership Act (UCIOA), and its official comments.¹² Legislative

¹² The WCA “substantially adopted the major provisions of the Uniform Common Interest Ownership Act” Park Ave. Condo. Owners Ass’n v. Buchan Devs., L.L.C., 117 Wn. App. 369, 374, 71 P.3d 692 (2003). In Marina Cove Condominium Owners Ass’n v. Isabella Estates, 109 Wn. App. 230, 241, 34 P.3d 870 (2001), abrogated on other grounds by Satomi Owners Ass’n v. Satomi, LLC, 167 Wn.2d 781, 225 P.3d 213 (2009), which was also decided under the WCA, we looked to the UCIOA’s official comments to determine the legislature’s intent. Our Supreme Court has noted: Other state courts have also turned to the official comments to interpret their versions of the Uniform Act. See Griffith v. Faltz, 162 Ariz. 599, 600, 785 P.2d 119 (1990) (“Although this court is not bound by the interpretation of the Commissioners on Uniform State Laws, that interpretation is highly persuasive and should be adopted unless it is erroneous or contrary to the settled policy of the state.”); State v. Rupe, 109 N.C. App. 601, 613–14, 428 S.E.2d 480 (1993) (stating, “Although the commentary is not binding when not enacted into law, where proper, it may be given substantial weight in discerning legislative intent.”). One Pac., 148 Wn.2d at 328.

The official comments to the UCIOA help little with our analysis. The comments show that the UCIOA drafters were concerned about what “use” meant. It explains that “use” might encompass such activities as pet ownership. But the official comments to the WCA are much briefer and omit much of the UCIOA analysis. The WCA official comments fail to address the term “use” or attempt to explain what activities constitute a “use” under the statute. The UCIOA and the WCA also differ in their statutory language in several material respects.

history may be of some interest even where the court concludes that the statute's plain language is unambiguous. Scott v. Cascade Structures, 100 Wn.2d 537, 544, 673 P.2d 179 (1983). "This is particularly so where the contemporaneous record of a bill's progress bolsters the plain meaning." Lane v. Port of Seattle, 178 Wn. App. 110, 119 n.3, 316 P.3d 1070 (2013). We conclude that nothing in the WCA's legislative history, official comments, or other related materials suggests that the legislature intended to limit "uses to which any unit is restricted" in RCW 64.34.234(4) to residential versus nonresidential uses.¹³

¹³ The parties submit (1) various attorney/commentator's articles addressing procedural requirements for passage of rental restrictions and (2) competing examples of other condominium declaration amendments that restricted leasing and were passed by either a 67 percent or a 90 percent vote. These authorities serve only to demonstrate that this issue is currently hotly debated and affects all condominium developments, not just Centre Pointe. See Jim Strichartz, How Associations Can Effectively Deal with Unit Rentals (May 2007) http://71.18.246.74/web_files/Articles.pdf.

Filmore filed a motion to strike the Association's second supplemental designation of clerk's papers, which consists of a "Declaration of Steven A. Rockey in Support of Defendant's Motion for RAP 2.3(b)(4) Certification." Attached to the declaration were the face page and page 7 from Strichartz's article, attached in its entirety below. This declaration was filed with the trial court on March 6, 2013, nearly a month after the court's summary judgment ruling. The declaration was submitted to support the Association's motion for certification for appeal.

Filmore urges us to strike the second supplemental designation of clerk's papers because (1) the portion of the record included in the second supplemental designation was not part of the record the trial court reviewed when ruling on summary judgment and was submitted to the trial court only in relation to the Association's motion for certification for appeal, (2) the record referenced in the second supplemental designation contains only part of the article and excerpted out sections contrary to the Association's position, and (3) Filmore already submitted its responsive brief and thus had no chance to respond to the issues raised in the article.

In sum, the record contains materials submitted to the trial court after the court made the summary judgment ruling that is now before us on discretionary review. Filmore has moved to strike these materials from the appellate record. Filmore relies on the rule that in reviewing an order granting or denying a motion for summary judgment, this court will consider only evidence and issues called to the attention of the trial court. RAP 9.12. However,

For the foregoing reasons, we reject Centre Pointe's narrow definition of "uses to which any unit is restricted" in RCW 64.34.264(4) where no strong evidence indicates the legislature intended to narrow its meaning beyond the plain or common meaning. We conclude that "the uses to which any unit is restricted" under RCW 64.34.264(4) unambiguously includes leasing. A lease restriction via declaration amendment requires a 90 percent vote. The Twelfth Amendment, which was passed with a 67 percent vote, is inconsistent with the WCA and is therefore invalid.¹⁴

Condominium Declaration

Centre Point correctly notes that "Section 17.3 of the Center Pointe declaration tracks the text of RCW 64.34.264(4)." Appellant's Br. at 25 (citation omitted). Both the WCA and the declaration provide that no amendment may change "the uses to which

a motion to strike is typically not necessary to point out evidence and issues a litigant believes this court should not consider. No one at the Court of Appeals goes through the record or the briefs with a stamp or scissors to prevent the judges who are hearing the case from seeing material deemed irrelevant or prejudicial. So long as there is an opportunity (as there was here) to include argument in the party's brief, the brief is the appropriate vehicle for pointing out allegedly extraneous materials—not a separate motion to strike.

Engstrom v. Goodman, 166 Wn. App. 905, 909 n.2, 271 P.3d 959 (2012).

The rules of appellate procedure allow a party to designate "those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court." RAP 9.6(a). The Association's designation of the record was within this rule. We deny the motion to strike.

¹⁴ We emphasize that even if the statute could be read to limit "use" to residential or nonresidential, individual condominium declarations may specify that a larger percentage than 67 percent is necessary to make general amendments to the declaration. See RCW 64.34.264(1) (setting "at least sixty-seven percent" as the general rule but allowing the declarant to require "any larger percentage the declaration specifies"). As noted above, here the declarant treated leasing as a permitted use and set forth a 90 percent voter approval rule for amendments changing the uses to which units are restricted.

any unit is restricted” in the absence of at least 90 percent of the votes in the association. We further agree with Centre Pointe’s assertion that “construction of a paragraph of a declaration is guided by the meaning of the corresponding statute.” Appellant’s Br. at 25 (citing Lake v. Woodcreek Homeowners Ass’n, 169 Wn.2d 516, 530-31, 243 P.3d 1283 (2010)). As discussed above, “the uses to which any unit is restricted” under RCW 64.34.264(4) encompasses lease restrictions. Therefore, we conclude that the declaration also mandates a 90 percent vote for amendments that alter leasing restrictions.

From 2003 until the passage of the Twelfth Amendment in 2012, unit owners were allowed to lease their units as a permitted use under the declaration’s express provision. Section 9.1.14 of Centre Pointe’s original declaration, entitled “Lease Restrictions,” informed owners that there is “no restriction on the right of any Unit Owner to lease his or her Unit” aside from certain documentation requirements not relevant here.¹⁵ Moreover, both the original and amended declaration discuss leasing under Article IX of the declaration, “Permitted Uses; Architectural Uniformity.” (Emphasis added.) Section 9.1, “Permitted Uses,” includes subcategories such as “Residential

¹⁵ Centre Pointe argues that the title of this subsection, “Leasing Restrictions,” is not determinative because the word “uses” does not appear in the same paragraph. But the title, structure, and text of the section all support a conclusion that the declarant intended to expand the meaning of “use” beyond residential /nonresidential. Centre Pointe also contends that interpreting the declaration to require a 90 percent vote would make it virtually impossible for the Association to pass an amendment addressing any other matter governed by paragraphs in Article IX. This argument disregards the specific language of section 9.1.14. Moreover, in light of our holding that the WCA requires a 90 percent vote to impose new leasing restrictions, adopting Centre Pointe’s argument would require us to hold that the declaration is inconsistent with the statute. We do not so hold. See Lake, 169 Wn.2d at 531 (“We think the parties to the declaration intended it to comply with the [Horizontal Property Regimes Act] not conflict with it”).

Use,” “Commercial Use,” “Vehicle Parking,” “Signs,” “Animals,” “Lease Restrictions,” “Assignment or Subletting,” and “Timesharing.” And under “Residential Use,” section 9.1.1 provides, “[T]he buildings and Units shall be used for residential purposes only, and for common social, recreational or other reasonable uses normally incident to such purposes.” (Emphasis added.)¹⁶

Finally, we note that requiring 90 percent voter approval to amend the declaration to impose significant new leasing restrictions protects the reasonable and settled expectations of unit owners who purchased their units under the original declaration and advances the legislature’s intent to provide additional consumer protection to condominium purchasers. See One Pac. Towers Homeowners’ Ass’n v. HAL Real Estate Invs., Inc., 148 Wn.2d 319, 330-31, 61 P.3d 1094 (2002) (discussing the strong consumer protection features of the WCA).

¹⁶ Other declaration provisions also indicate a broader meaning of “use.” Article X, section 10.16.2 of the declaration describes the Association’s lien for assessments and provides that the Association has a lien on property “not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues, and profits thereof” (Emphasis added.) This section tracks RCW 64.34.364(9), which provides for enforceable liens if the declaration, among other things, “provides in its terms that the units are not used principally for agricultural or farming purposes” (Emphasis added.)

Exhibit D to the declaration contains a section titled “Schedule 12 – Condemnation.” Under section 12.1:

If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for the Owner’s Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired.

(Emphasis added.)

Our conclusion is supported by our Supreme Court's analysis in Shorewood West Condominium Ass'n v. Sadri, 140 Wn.2d 47, 992 P.2d 1008 (2000), which interpreted the WCA's predecessor, the Horizontal Property Regimes Act (HPRA). In Shorewood, a condominium association amended its bylaws to restrict leasing. Shorewood, 140 Wn.2d at 51. The issue in Shorewood was whether "a restriction on use which appears in a condominium homeowners' association bylaw but not in the declaration [is] in accordance with the [HPRA]." Shorewood, 140 Wn.2d at 52. The court stated, "An association may apply a restriction on leasing, if adopted in accordance with the statute, to current owners." Shorewood, 140 Wn.2d at 54. The court began its analysis by noting that the HPRA requires that the condominium declaration contain a statement of use restrictions and that amendments must receive the consent of at least 60 percent of owners. The court further noted, "[A] survey of the case law from different jurisdictions indicates that it is the general practice to put specific restrictions, not merely restrictions on broad use categories, into the declaration, whether or not they may also be in the bylaws." Shorewood, 140 Wn.2d at 55-56. The court also found significant that the Association's declaration contained specific use restrictions beyond merely residential/nonresidential use and that the condominium declaration "discusses leasing and implicitly permits it." Shorewood, 140 Wn.2d at 56. The court concluded that "one should read 'use' in RCW 64.32.090(7) to mean all uses and not just general categories of use such as residential use or commercial use." Shorewood, 140 Wn.2d at 56. The court further concluded that use restrictions appearing in unrecorded amendments to bylaws and not in the declaration are not in accordance with the HPRA and are therefore invalid. Shorewood, 140 Wn.2d at 57.

Centre Pointe argues that Shorewood is distinguishable because the condominium in that case was governed by the HPRA rather than the WCA. Centre Pointe further notes that Shorewood did not involve a dispute over the percentage approval required to impose a restriction on leasing. However, despite these differences, we observe that both the HPRA and the WCA require certain disclosures in the declaration. Here, similar to the declaration in Shorewood, Centre Pointe's declaration contains specific use restrictions beyond the general residential/nonresidential categories. The declaration's structural text groups leasing in common with other permitted uses of the property.

The analogous context of restrictive covenants governing a homeowners' association is also instructive.¹⁷ In Wilkinson v. Chiwawa Communities Ass'n, 180 Wn.2d 241, 245, 327 P.3d 614 (2014), our Supreme Court recently invalidated an amendment, passed by a simple majority vote, which prohibited short-term vacation rentals. As a general rule,

when the general plan of development permits a majority to change the covenants but not create new ones, a simple majority cannot add new restrictive covenants that are inconsistent with the general plan of development or have no relation to existing covenants. This rule protects the reasonable, settled expectation of landowners by giving them the power to block "new covenants which have no relation to existing ones" and deprive them of their property rights.

Wilkinson, 180 Wn.2d at 256 (citations and internal quotation marks omitted) (quoting Meresse v. Stelma, 100 Wn. App. 857, 865-66, 999 P.2d 1267 (2000)). The association

¹⁷ See 18 WILLIAM STOEBC, WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS § 12.3 at 23 (2d. ed. 2004) ("The condominium declaration . . . is analogous in some respects to a declaration of restrictive covenants and in some respects to a subdivision plat.").

argued that the amendment was valid because short-term vacation rentals were inconsistent with restrictive covenants prohibiting commercial use and restricting lots to single family residential use. However, the court concluded, "The Chiwawa general plan of development allows homeowners to rent their homes without any durational limitation." Wilkinson, 180 Wn.2d at 257. Because the covenants did not place residents on notice that short-term rentals would be prohibited, the court held that the amendment must be invalidated to protect the "reasonable and settled expectations of landowners in their property." Wilkinson, 180 Wn.2d at 257. Here, similarly, the Centre Pointe declaration plainly indicates that condominium purchasers have a right to lease their units. Requiring the Association to obtain 90 percent approval to impose a new leasing restriction scheme that substantially alters the status quo protects condominium owners' reasonable and settled expectations.

In sum, we hold that "the uses to which any unit is restricted," in RCW 64.34.264(4) and the Centre Pointe declaration encompasses leasing as a "use" of the property. A lease restriction via declaration amendment requires a 90 percent vote. The Twelfth Amendment, which was passed with a 67 percent vote, is therefore invalid.

Estoppel

Centre Pointe argues that Filmore was estopped by its inequitable conduct to challenge the Twelfth Amendment for lack of 90 percent approval. The elements of equitable estoppel are "(1) [a]n admission, statement, or act inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement or act; and (3) injury to such other party from allowing the first party to contradict or repudiate such admission, statement, or act." Finch v. Matthews, 74

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Wn.2d 161, 171 n.3, 443 P.2d 833 (1968). This doctrine is not favored and must be proved by clear, cogent, and convincing evidence. Robinson v. City of Seattle, 119 Wn.2d 34, 82, 830 P.2d 318 (1992).

Centre Pointe claims that "Filmore's conduct, acting as if it was going to sell the units, together with its silence at critical times when it would have been expected to speak up, was inconsistent with its position taken after the instant lawsuit was served." Appellant's Br. at 29. We disagree. "Estoppel can arise through silence, as well as statements, when one has a duty to speak out." McDaniels v. Carlson, 108 Wn.2d 299, 308, 738 P.2d 254 (1987) (emphasis added). Even viewing the facts most favorably to Centre Pointe, it has failed to show that Filmore owed any duty to speak. Filmore's silence involved no representation of fact, and even if it did, it was not inconsistent with Filmore's later claim that the amendment was invalid.

Centre Pointe further claims that if André Molnar had told the Association his position that 90 percent approval was required, the Association would have had the opportunity to pursue 90 percent approval. But Centre Pointe cites no authority requiring a plaintiff to disclose the nature of its challenges and give the defendant an opportunity to cure prior to filing a lawsuit. Moreover, Centre Pointe's assertion that it would have pursued 90 percent approval is speculative. Elements established by virtue of speculation or conjecture are insufficient to warrant estoppel. Pub. Util. Dist. No. 1 of Douglas County v. Cooper, 69 Wn.2d 909, 918, 421 P.2d 1002 (1966). Centre Pointe's estoppel argument fails.

Attorney Fees

Filmore requests appellate attorney fees and costs as the prevailing party under RAP 18.1, Article XIII of the declaration,¹⁸ and RCW 64.34.455.¹⁹ Filmore also refers to a Bylaw that is not in our record as well as the trial court's summary judgment order below, in which the court ordered that "both parties retain rights to make claims for attorney's fees to be reviewed through subsequent proceedings before this court."²⁰ Review of the cited authorities indicates that they either fail to support Filmore's request or confer discretion on the court in making a fee award. Given the debatable issues of law presented in this case, we deny Filmore's request.

CONCLUSION

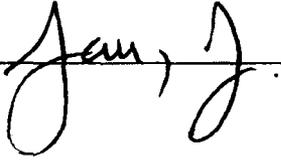
The "uses to which any unit is restricted" under RCW 64.34.264(4) unambiguously includes leasing. The declaration is consistent with the statute. We conclude that 90 percent approval of unit owners is required to amend the declaration to impose new leasing restrictions. The Twelfth Amendment, which was passed with 67 percent approval, is inconsistent with the WCA and the original declaration and is

¹⁸ Article XIII of the declaration provides that every "Owner and occupant of a Unit shall comply strictly with the provisions of the Condominium Act or the Condominium Instruments" and gives the Board of Directors the power to enforce the same. The Article does not mention attorney fees.

¹⁹ RCW 64.34.455 provides, "If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party."

²⁰ Neither party requested fees below, and the court's order awarded no fees. The order simply preserved each party's right to make future fee requests.

therefore invalid. We affirm the order on summary judgment invalidating the Twelfth Amendment.

A handwritten signature in cursive script, appearing to read "Jan, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Douglas, J.", written over a horizontal line.

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.

APPENDIX 2

u. s. army white *n.*, usu cap U.S.A. : a pale yellowish white

u. s. army yellow *n.*, usu cap U.S.A. : a strong orange yellow that is redder and deeper than Spanish yellow, bright maize, or nasturtium yellow (sense 2)

usbek or usbeg *cap.*, var of UZBEK

USC *abbr* under separate cover

use \ˈjuːs\ *n.* -s [ME *us*: *use*, fr. OF *us*, fr. L *usus* use, employ- ment, custom, fr. *usus*, past part. of *uti* to use, employ.]

1 a: the act or practice of using something; EMPLOYMENT (a ~ of his public post to secure a favor for a friend) (become familiar with algebra through the ~ of a good text) (an increase in the ~ of intoxicating liquors) (the ~ of subsidies to hold food prices down — *Current Biog.*) : APPLICATION (knowledge . . . to be valuable must be ready for ~ — C.H. Grandgent) **b**: the fact or state of being used (a lamp in daily ~ for over 50 years) (put the new broom to ~) (expressions out of ~ except in dialect) (when fountain pens first came into ~) **c**: continued or repeated exercise or employment (worn out through long ~) **d**: a method or manner of using something (the water in the font, having once been consecrated, tempted folk to superstitious ~s — G.G. Coulton) (gain proficiency in the ~ of the typewriter) **2 a** (1): habitual or customary practice; accustomed or usual procedure (2): an individual habit or group custom (it had been a family ~ . . . to make a point of saving for him anything which he might possibly eat — Mary Austin) **b**: a liturgical form or observance (ferial ~) (festal ~); *esp*: a liturgy having modifications peculiar to a local church or diocese (as in England before the Reformation) or a religious order (the celebration of Mass in those religious orders . . . whose ~ differs from the standard Roman rite — *adv*) (from henceforth all the whole realm shall have but one ~ — *Bk. of Com. Prayer*) **c** *obs*: common occurrence; ordinary experience (these things are ~ beyond all — Shak.) **3 a**: the privilege or benefit of using something (offered him the ~ of his pen for signing) (had the ~ of the usual class time for study) (nor shall private property be taken for public ~ without just compensation — *U.S. Constitution*) (the Lord bless this food to our ~, and us to His service — *Bk. of Com. Worship*) **b**: the ability or power to use something (as a limb or faculty) (regained the ~ of his arm) (still has the ~ of his speech) **c**: the legal enjoyment of property that consists in its employment, occupation, exercise, or practice (~ of the automobile is covered by insurance) **d**: a personal servitude under Roman and civil law consisting in a *ius utendi* as distinguished from the usufruct **4 a**: a particular service or end; PURPOSE, OBJECT, FUNCTION (put his learning to a good ~) (the river waters were dammed for power — *Amer. Guide Series: Mich.*) (develop the industrial ~s of atomic energy) **b** (1): the quality of being suitable for employment; capability of filling a need or promoting an advantage; USEFULNESS, UTILITY (being ready first was of little ~, since you were then called on to button the others — Natacha Stewart) (old clothes that might be of some ~ to refugees) (2): something that fills a need or gives a benefit or advantage — used predicatively (the thing that any artist must have to go on: the feeling . . . that he's some ~ in the world — Deems Taylor) (small ~ to argue if he's already made up his mind) *esp.* in negative constructions (it is no ~ reading this article any further until you have settled this first point for yourself — J.B. Nettleship) **c**: the occasion or need to employ; NECESSITY, DEMAND (took only what he had ~ for) (found little ~ for his rifle) **5 a**: the benefit in law of one or more persons; *specif*: the benefit of or the profit arising from lands and tenements to which legal title is held by a person in whom a trust or confidence is reposed that another person should take and enjoy — compare CESTUI QUE USE **b**: a legal arrangement that is a right in equity by which such benefits and profits are established in one other than the legal possessor of the property — compare TRUST **6** *chiefly dial*: money paid for the use of a loan; INTEREST **7**: a part of a sermon in which a doctrine is applied to life; practical application (the discourse . . . was divided into fifteen heads, each of which was garnished with seven ~s of application — Sir Walter Scott) **8**: a rough block of iron or steel suitable for working up into small forgings or for welding in making large ones **9**: a favorable attitude toward a person or thing as having worth or use; ESTEEM, LIKING — used with *for* in negative constructions (had no ~ for most sales managers — *Time*) (had very little ~ for the music of most of his contemporaries — Deems Taylor)

SYN SERVICE, ADVANTAGE, PROFIT, ACCOUNT, AVAIL, and USE have in common a sense of a useful or valuable end, result, or purpose. USE stresses the practicality of the end, result, or purpose for which something is employed (a tool with many *uses*) (put a gift of money to good *use* in paying off debts) SERVICE is used more frequently of persons or animals or their work or activities than of inanimate things; in relation to persons it *usu.* suggests self-abnegation (a man of great *service* to the community) (put a horse to good *service* in hauling logs) ADVANTAGE puts stress upon improvement of one's position or enhancement of something one considers of value, *esp.* personal value (gain the *advantage* of a steady income) (offer valuable educational *advantages* — *Amer. Guide Series: Minn.*) (find some *advantage* in even the worst circumstances) PROFIT is more particular in *usu.* implying reward, often the rewarding character of what is attained but commonly pecuniary gain (whether or not they found the sources of the gold they were seeking, they certainly drew other *profits* from their venture — *Brit. Bk. News*) (pursue graduate studies with *profit* — *Official Register of Harvard Univ.*) (coal and steel interests were merging with mutual *profit* — *Amer. Guide Series: Pa.*) ACCOUNT *usu.* suggests a calculated value; it occurs commonly in fixed phrases (turn every talent to good *account*) (consider a small loss of no *account* in the long run) AVAIL strongly suggests effectualness or effectiveness, occurring *usu.* in idiomatic phrases mostly in the negative (medicine that is of no *avail* in curing a given disease) (of what *avail* is it to spend time dreaming) **SYN** see in addition HABIT

— **in use or into use**: in heat (conception can only occur at the precise time when the mare is fully in *use* — Henry Wymalen)

2use \ˈjuːz, *in vi* sense 1\ *juːs* sometimes \ˈjuːz\ *vb* used \ˈjuːzd, *in vi* sense 1\ *juːst* (\ˈjuːs when "to" follows immediately) *some-* times \ˈjuːz(d)\ **used**; **using**; **uses** [ME *usen*, fr. OF *user*, fr. ML *usare*, fr. L *usus*, past part. of *uti* to use, employ, enjoy; akin to Oscan *aiitiu* *uses* (acc. pl.)] **1 a** *archaic*: to observe or follow: as a custom (the like custom is *used* throughout the dominions — Samuel Purchas) (it was in old times *used* . . . for men to shave themselves — Richard Montagu) **b** *archaic*: to follow or practice regularly as a mode of life or action (then let them ~ the office of a deacon — 1 Tim. 3. 10 (AV)) **c** *archaic*: to make familiar by repeated or continued practice or experience; ACCUSTOM, HABITUATE, INURE (spoke near the sea in storms . . . to ~ himself to speak aloud — Earl of Chesterfield) **d** *chiefly dial*: to resort to regularly; FREQUENT (it ~s more the low sandy inland parts than the plovers — Hans Sloane) **2**: to put into action or service; have recourse to or employment of; EMPLOY (the pronouncements that people from different parts of the country ~) (wondered whether he would ever ~ the tie she had given him) **3** EXERCISE (examiners with ~ judgment and discretion in applying the exercise test — H.G.

Armstrong) (< his political influence to get the job): as
a : to speak or write in (a language) (they speak little Welsh
 — only forty or so in a thousand ~ the tongue — Wilfrid Goat-
 man) **b** : to consume or take (as liquor or drugs) regularly
 (does not give scholarships to students who ~ tobacco) (do
 you ~ sugar in your coffee) **c** *archaic* : to have sexual rela-
 tions with (. . . did carnally know and ~ his wife — Francis
 Hackett) **d** *archaic* : to practice or exercise upon or toward
 others (I guess by the . . . waspish action which she did ~
 — Shak.) (with their ~ they have used deceit — Rom
 3:13 (AV)) **3** : to carry out a purpose or action by means of
 : make instrumental to an end or process : apply to advantage
 : turn to account : UTILIZE (carried air mail using two small
 single-engined planes and five employees — *Current Biog.*)
 (some of the best tests . . . can be used only by professional
 psychologists — Bruce Payne): as **a** : to spend (time) in some
 occupation, interest, or activity : PASS (they ~ 30 days in
 traveling . . . about 1,000 miles — F.C.Lincoln) (stop by the
 way . . . to chase a rabbit, or merely to ~ time — Joyce Cary)
b : to make an involuntary or concealed means to one's own
 ends (he is being used and manipulated by the knowing men
 around him — T.R.Ybarra) (juries . . . may be used to suppress
 writings in opposition to the government — Zechariah Chafee)
c : to employ a word, phrase, or sentence to refer (to say
 "life is a short word" is to mention the word *life* . . . but to say
 "Life is short" is to ~ it — R.G.F.Robinson) **4** : to expend
 or consume by putting to use (percent of the world's popula-
 tion . . . produces and ~s almost one half of the industrial
 goods and services — C.C.Furnas) **5** *archaic* : to bear (one-
 self) in relations with others : BEHAVE, CONDUCT (he used him-
 self more like a fellow to your Highness than like a subject
 — Edward Herbert) **b** : to behave toward : act with regard to
 : TREAT (had been taken prisoner by . . . partisans, who had
 used him with some brutality — Eric Linklater) **6** : to apply or
 have applied as the usual designation (as a title or surname) of
 a person (took his friends a while to acquire the habit of using
 the "doctor" after he received his Ph.D.) (a woman who ~s
 her maiden name professionally) **7** : to benefit from the use of
 (houses that could ~ a paint job — J.W.Ellison b. 1929) (I can
 ~ some of that gold — E.B.Lung) ~ *vi* **1** **a** : to be in the habit
 or custom : make a practice of doing something : be wont (sit
 here by the window with your hand in mine . . . both of one
 mind, as married people ~ — Robert Browning) (he does not
 ~ to be last on these occasions — George Lillo) (the black
 coachman, who had used to drive . . . the carriage — Marguerite
 Young) (patrons who used to do their banking on Friday)
 (< to have tallyho parties out on the . . . pike when we were
 young — Anne G. Winslow) (used you to beat your mother — G.
 B.Shaw) **b** — used in the past with *to* to indicate a former fact
 or state (claims the winters used to be harder) (isn't going to
 take as long as it used to) (didn't ~ to have a car) **2** *chiefly*
dial **a** : to make a practice of going to a place : resort to cus-
 tomarily : go regularly (if he didn't quit using around there
 she would make trouble for him — Mark Twain) **b** : to occupy
 a place as a settled residence or habitat : DWELL, LIVE — usu.
 used of an animal (I know where the gray fox ~s up yonder
 — R.A.Helton)

SYN EMPLOY, UTILIZE, APPLY, AVAIL: USE is general and indi-
 cates any putting to service of a thing, usu. for an intended or
 fit purpose or person, in this latter reference with implications
 of inconsiderate or high-handed treatment (*use* a jack to raise
 a car) (*use* a knife blade to pry up a lid) (*use* money wisely)
 (*used* his business experience to place the country in a better
 financial position — S.G.Inman) (his sense of being used
 rose suddenly above the treacherous sympathy he had begun
 to feel for her — Booth Tarkington) EMPLOY may imply pur-
 posive selection, continued use or utilization, or smart turning
 to account (by the dialect which he employs the author betrays
 that he was an Ionian Greek — Benjamin Farrington) (fre-
 quently lotteries were employed to raise funds for channel
 clearing — *Amer. Guide Series: Tenn.*) UTILIZE may indicate
 finding a new, profitable, or practical use for something (it was
 now charged against him that he utilized his military office for
 private gain — R.G.Adams) (all civilized governments have
 utilized the Indians as military allies — M.M.Quaife) (a huge
 wine bottle, utilized as a pivot for the rooster weather vane
 when no other instrument would hold — *Amer. Guide Series:
 Mich.*) APPLY may imply a using or employing especially for a
 particular purpose or in a particular situation, sometimes with
 the suggestion of bringing into contact or relationship (*apply*
 salve to a burn) (*apply* pressure at a crucial point) (the value of
 applying statistical methods to the data) (undertakes to apply
 the findings of science to personal problems — *Amer. Guide
 Series: Mich.*) AVAIL in reflexive uses applies to a using or tak-
 ing advantage of something one might waive or leave untouched
 (I doubt if I should abuse the permission. It is a hundred to
 one if I should avail myself of it four times a year — Charles
 Dickens) (takes us thus directly into the consciousness of his
 characters, and in order, he has availed himself of
 methods of which Flaubert never dreamed — Edmund Wilson)
 — **use language** : to use profanity : SWEAR (her husband's
 using language before ladies showed him to be in high good
 humor — Edith Wharton)

useable *var of* USABLE

use and occupancy insurance *n* [ˈuːs] : BUSINESS INTERRUPT-
 ION INSURANCE

use and occupation *n* : a legal action of the character of an
 assumpsit that may be maintained by the owner of real prop-
 erty against a person who has had the use and occupation of
 it under express or implied contract to pay therefor but without
 a written lease or beyond the term of the written lease

use and wont *n* : use 2a(1) (Life is an affair of use and wont and
 persists substantially unchanged — Walter Moberly)

used *v* yuz, *n* *in sense* yuzist (yuz *wher* "to" follows immedi-
 ately) sometimes [yuz(d)] *adj* [ME, fr. past part. of *usen* to
 use] **1** : employed in accomplishing something (his most ~
 name) (the principle of surprise is the most ~ and misused of
 all the principles of war — H.H.Arnold & I.C.Eaker) **2** : that
 has endured considerable use : that has been utilized according
 to its nature or purpose : as **a** : partly worn-out : SECOND-
 HAND (bought a ~ car because he couldn't afford a new one)
 (collect ~ clothing for overseas relief) **b** of a stamp : that has
 served as postage on a piece of mail **3** : ACCUSTOMED, HABITU-
 ATED, EXPERIENCED (showing how ~ he was to papers with lies
 on them — Gilbert Millstein)

use district *n* [ˈuːs] : a zone or area in a city or town within
 which the types of usage to which buildings are put are re-
 gulated by law

used-n't or use-n't \ˈyūsˈn(t)\ [by contr.] *chiefly Brit* : used
 not

used to \ˈyūs sometimes ˈyuz + pronunc at to\ *adv* [fr. the
 verb phrase *used to*, fr. *used*, past of *use* + *to*, function word
 normally indicating that the following verb is an infinitive]
dial : FORMERLY, ONCE (he ain't as popular now as he used to
 was — Mark Twain) (I can't do the hard day's work I used to
 could — Erskine Caldwell) (used to Pa wouldn't a done a thing
 like this — J.H.Stuart)

use-ee \ˈyūzēv *n* -s [ˈuːs + -ee] : one to or for whose use a
 thing is done or given; esp : one for whose benefit a suit is
 brought : use plaintiff

use-ful \ˈyūsfl\ *adj* [ˈuːs + -ful] : capable of being put to use
 : having utility : ADVANTAGEOUS (the Communists find him
 just as ~ as an opponent — *Time*); esp : producing or having
 the power to produce good : serviceable for a beneficial end or
 object (all sorts of ~ implements such as axes, chisels, gouges,
 arrowheads — *Amer. Guide Series: R.I.*) (< to remind our-
 selves occasionally of our limitations) (a . . . coin had fallen

APPENDIX 3

Black's Law Dictionary (9th ed. 2009), use

USE

use (yoos), *n.* (bef. 12c) **1.** The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional <the neighbors complained to the city about the owner's **use** of the building as a dance club>.

accessory use. *Zoning.* A **use** that is dependent on or pertains to a main **use**. [Cases: Zoning and Planning ¶¶301–308.]

adverse use. A **use** without license or permission. Cf. ADVERSE POSSESSION.

beneficial use. *Property.* The right to **use** property and all that makes that property desirable or habitable, such as light, air, and access, even if someone else owns the legal title to the property.

collateral use. *Intellectual property.* The legal **use** of a trademark by someone other than the trademark owner, whereby the other party must clearly identify itself, the **use** of the trademark, and the absence of affiliation with the trademark owner.

commercial use. A **use** that is connected with or furthers an ongoing profit-making activity. Cf. *noncommercial use*.

conditional use. *Zoning.* A **use** of property subject to special controls and conditions. • A conditional **use** is one that is suitable to a zoning district, but not necessarily to every location within that district. — Also termed *special exception*. See SPECIAL EXCEPTION (2). [Cases: Zoning and Planning ¶¶382.]

conforming use. *Zoning.* The **use** of a structure or of the land in conformity with the **uses** permitted under the zoning classifications of a particular area, such as the building of a single-family dwelling in a residential zone. [Cases: Zoning and Planning ¶¶271.]

double use. *Patents.* An application of a known principle or process to a new **use** without leading to a new result or product. [Cases: Patents ¶¶27.]

exclusive use. **1.** *Trademarks.* The right to **use** a specific mark without exception, and to prevent another from using a confusingly similar mark. [Cases: Trademarks ¶¶1182.] **2.** *Property.* The right of an adverse user to a property, exercised independently of any similar rights held by others; one of the elements of a prescriptive easement. See USER. [Cases: Adverse Possession ¶¶36, 37; Easements ¶¶8(4).]

experimental use. *Patents.* **1.** The **use** or sale of an invention by the inventor for experimental purposes. **2.** A defense to liability for patent infringement when the infringement took place only to satisfy curiosity or to complete an experiment, rather than for profit. [Cases: Patents ¶¶260.]

highest and best use. *Real estate.* In valuing property, the **use** that will generate the most profit. • This standard is used esp. to determine the fair market value of property subject to eminent domain. — Often shortened to *best use*. — Also termed *most suitable use*. [Cases: Eminent Domain ¶¶134; Taxation ¶¶2515.]

incidental use. *Zoning.* Land **use** that is dependent on or affiliated with the land's primary **use**. [Cases: Zoning and Planning ¶¶301–308.]

most suitable use. See *highest and best use*.

noncommercial use. A **use** for private pleasure or business purposes that non involving the generation of income or bestowing a reward or other compensation. Cf. *commercial use*.

nonconforming use. *Zoning.* Land **use** that is impermissible under current zoning restrictions but that is allowed because the **use** existed lawfully before the restrictions took effect. [Cases: Zoning and Planning ¶¶321–338.]

pious use. The designation and actual **use** of property for recognized religious or charitable purposes. Cf. *superstitious use*.

popular use. A person's imperfect right to enjoy public land. • A popular **use** is not legally enforceable. It is dependent on the government's will to allow access to the land.

public use. **1.** *Property.* The public's beneficial right to **use** property or facilities subject to condemnation. See CONDEMNATION (2). [Cases: Eminent Domain ¶¶12–42.] **2.** *Patents.* Any **use** of or offer to **use** a completed or operative invention in a nonsecret, natural, and intended manner. • A patent is invalid if the invention was in public **use** more than one year before the patent's application date. [Cases: Patents ¶¶75.]

“The term ‘*public use*’ is misleading, for any **use** from which the public is not excluded, even though none comes, is held to be public. Similarly, an actual public **use** of a machine, even though the invention feature be effectively concealed from inspection,

is held to be public. It makes no difference whether the patent or other publication is that of the inventor or someone else.” Roger Sherman Hoar, *Patent Tactics and the Law* 48 (3d ed. 1950) (citing *Gillman v. Stern*, 114 F.2d 28, 31 (2d Cir. 1940)).

reasonable use. Use of one's property for an appropriate purpose that does not unreasonably interfere with another's use of property. See REASONABLE-USE THEORY.

regular use. *Insurance.* A use that is usual, normal, or customary, as opposed to an occasional, special, or incidental use. • This term often appears in automobile-insurance policies in the definition of a *nonowned automobile* — that is, an automobile not owned by or furnished for the regular use of the insured. Nonowned automobiles are excluded from coverage under most liability policies. [Cases: Insurance ¶¶2657.]

superstitious use. A designation or use of property for religious purposes not legally recognized or tolerated (such as gifts either favoring an unrecognized religion or supporting the saying of prayers for the dead). Cf. *pious use*.

2. A habitual or common practice <drug use>. **3.** A purpose or end served <the tool had several uses>. **4.** A benefit or profit; esp., the right to take profits from land owned and possessed by another; the equitable ownership of land to which another person holds the legal title <cestui que use>. See CESTUI QUE USE. — use (yooz), *vb*.

contingent use. (17c) A use that would be a contingent remainder if it had not been limited by way of use. • An example is a transfer “to A, to the use of B for life, with the remainder to the use of C's heirs.” — Also termed *future use*.

entire use. A use of property solely for the benefit of a married woman. • When used in the habendum of a trust deed for the benefit of a married woman, this phrase operates to keep her husband from taking anything under the deed. — Also termed *entire benefit*; *sole use*; *sole and separate use*.

executed use. *Hist.* A use resulting from combining the equitable title and legal title of an estate, done to comply with the Statute of Uses' mandate that the holder of an estate be vested with legal title to ensure the holder's liability for feudal dues. See STATUTE OF USES.

executory use. See *springing use*.

future use. See *contingent use*.

official use. *Hist.* A use imposing a duty on a person holding legal title to an estate on behalf of another, such as a requirement that a feoffee to uses sell the estate and apportion the proceeds among several beneficiaries. • The Statute of Uses eliminated this type of use.

permissive use. *Hist.* A passive use resorted to before passage of the Statute of Uses in 1535 to avoid an oppressive feudal law (such as mortmain) by naming one person as the legal owner of property while allowing another to possess the property and enjoy the benefits arising from it.

present use. *Hist.* A use that has an immediate existence and is subject to the Statute of Uses.

resulting use. (18c) A use created by implication and remaining with the grantor when the conveyance lacks consideration.

secondary use. See *shifting use*.

shifting use. (18c) A use arising from the occurrence of a certain event that terminates the preceding use. • In the following example, C has a shifting use that arises when D makes the specified payment: “to A for the use of B, but then to C when D pays \$1,000 to E.” This is a type of conditional limitation. — Also termed *secondary use*. See *conditional limitation* under LIMITATION. [Cases: Trusts ¶¶131; Wills ¶¶625.]

sole and separate use. See *entire use*.

springing use. (17c) A use arising on the occurrence of a future event. • In the following example, B has a springing use that vests when B marries: “to A for the use of B when B marries.” — Also termed *executory use*. [Cases: Trusts ¶¶131; Wills ¶¶625.]

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APPENDIX 4

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West's Revised Code of Washington Annotated
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West's RCWA 64.32.010

64.32.010. Definitions

Effective: June 12, 2008

Currentness

As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

- (a) The land on which the building is located;
 - (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;
 - (c) The basements, yards, gardens, parking areas and storage spaces;
 - (d) The premises for the lodging of janitors or persons in charge of the property;
 - (e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - (f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
 - (g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;
 - (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (7) "Common expenses" include:
- (a) All sums lawfully assessed against the apartment owners by the association of apartment owners;
 - (b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;
 - (c) Expenses agreed upon as common expenses by the association of apartment owners;
 - (d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.
- (8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.
- (9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter.

(15) "Percent of the apartment owners" means the apartment owners with the stated percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

Credits

[2008 c 114 § 3, eff. June 12, 2008; 1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

Notes of Decisions containing your search terms (0)

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West's RCWA 64.32.010, WA ST 64.32.010

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West's RCWA 64.32.050

64.32.050 . Common areas and facilities

Currentness

(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

Credits

[1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

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West's RCWA 64.32.090

64.32.090 . Contents of declaration

Currentness

The declaration shall contain the following:

- (1) A description of the land on which the building and improvement are or are to be located;
- (2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
- (4) A description of the common areas and facilities;
- (5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;
- (7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;
- (8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;
- (9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;
- (10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners.

Credits

[1963 c 156 § 9.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

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West's RCWA 64.32.100

64.32.100 . Copy of survey map, building plans to be filed -- Contents of plans

Currentness

Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

- (1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;
- (2) The number of the apartment and its dimensions;
- (3) The approximate square footage of each unit;
- (4) The number of bathrooms, whole or partial;
- (5) The number of rooms to be used primarily as bedrooms;
- (6) The number of built-in fireplaces;
- (7) A statement of any scenic view which might affect the value of the apartment; and
- (8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

64.32.100. Copy of survey map, building plans to be..., WA ST 64.32.100

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor.

Credits

[1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

West's RCWA 64.32.100, WA ST 64.32.100

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West's RCWA 64.32.120

64.32.120. Contents of deeds or other conveyances of apartments

Currentness

Deeds or other conveyances of apartments shall include the following:

- (1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume and page or county auditor's recording number of the recorded declaration;
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;
- (3) A statement of the use for which the apartment is intended;
- (4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;
- (5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter.

Credits

[1999 c 233 § 9; 1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

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West's RCWA 64.32.180

64.32.180. Exemption from liability for contribution for common expenses prohibited

Effective: June 7, 2012

Currentness

No apartment owner may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his or her apartment.

Credits

[2012 c 117 § 200, eff. June 7, 2012; 1963 c 156 § 18.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

West's RCWA 64.32.180, WA ST 64.32.180

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West's RCWA 64.32.250

64.32.250. Application of chapter, declaration and bylaws

Currentness

(1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners.

Credits

[1963 c 156 § 25.]

Editors' Notes

APPLICATION

<See italic note preceding § 64.32.010>

Notes of Decisions containing your search terms (0)

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West's RCWA 64.32.250, WA ST 64.32.250

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Article 1. General Provisions

West's RCWA 64.34.010

64.34.010. Applicability

Effective: January 1, 2012

Currentness

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.208 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), RCW 64.34.304 (1) (c) through (f) and (k) through (o) (powers of unit owners' association), RCW 64.34.308 (1) (board of directors and officers), RCW 64.34.340 (voting--proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360 (3) (common expenses--assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through 64.34.392 (reserve studies and accounts), and RCW 64.34.020 (definitions) 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.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability--waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement--general provisions), RCW 64.34.415 (public offering statement--conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums--notice--tenants--relocation assistance), and RCW 64.34.455 (effect of violations on rights of action--attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium.

Credits

[2011 c 189 § 6, eff. Jan. 1, 2012. Prior: 2008 c 115 § 7, eff. June 12, 2008; 2008 c 114 § 1, eff. June 12, 2008; 1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

64.34.010. Applicability, WA ST 64.34.010

Notes of Decisions (2)

West's RCWA 64.34.010, WA ST 64.34.010

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Article 2. Creation, Alteration, and Termination of Condominiums

West's RCWA 64.34.216

64.34.216. Contents of declaration

Currentness

(1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to nonresidential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(i);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under *RCW 64.34.020(2) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and **64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate.

Credits

[1992 c 220 § 7; 1989 c 43 § 2-105.]

64.34.216. Contents of declaration, WA ST 64.34.216

West's RCWA 64.34.216, WA ST 64.34.216

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West's RCWA 64.34.264

64.34.264. Amendment of declaration

Currentness

(1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, 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, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(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.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

Credits

[1989 c 43 § 2-117.]

64.34.264. Amendment of declaration, WA ST 64.34.264

Notes of Decisions (1)

West's RCWA 64.34.264, WA ST 64.34.264

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West's RCWA 64.34.268

64.34.268. Termination of condominium

Currentness

(1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs.

Credits

[1992 c 220 s 12; 1989 c 43 § 2-118.]

64.34.268. Termination of condominium, WA ST 64.34.268

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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West's RCWA 64.34.348

64.34.348. Common elements--Conveyance--Encumbrance

Currentness

(1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances.

Credits

[1989 c 43 § 3-113.]

64.34.348. Common elements--Conveyance--Encumbrance, WA ST 64.34.348

West's RCWA 64.34.348, WA ST 64.34.348

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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West's RCWA 64.34.352

64.34.352. Insurance

Currentness

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first-class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.090(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use.

Credits

[1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

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West's RCWA 64.34.380

64.34.380. Reserve account--Reserve study--Annual update

Effective: January 1, 2012

Currentness

- (1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.
- (2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.
- (3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.
- (4) This section and RCW 64.34.382 through 64.34.392 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements.

Credits

[2011 c 189 § 3, eff. Jan. 1, 2012; 2008 c 115 § 1, eff. June 12, 2008.]

West's RCWA 64.34.380, WA ST 64.34.380

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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Article 4. Protection of Condominium Purchasers

West's RCWA 64.34.400

64.34.400. Applicability--Waiver

Currentness

(1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition of all of the units in a condominium in a single transaction;
- (f) A disposition to other than a purchaser as defined in *RCW 64.34.020(26); or
- (g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

Credits

[1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

West's RCWA 64.34.400, WA ST 64.34.400

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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West's RCWA 64.34.410

64.34.410. Public offering statement--General provisions

Effective: June 12, 2008

Currentness

(1) A public offering statement shall contain the following information:

(a) The name and address of the condominium;

(b) The name and address of the declarant;

(c) The name and address of the management company, if any;

(d) The relationship of the management company to the declarant, if any;

(e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;

(f) The nature of the interest being offered for sale;

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

64.34.410. Public offering statement--General provisions, WA ST 64.34.410

- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;
- (n) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (o) The estimated current common expense liability for the units being offered;
- (p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;
- (q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;
- (r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;
- (s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;
- (t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;
- (u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;
- (v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;
- (w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;
- (x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);
- (y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

64.34.410. Public offering statement--General provisions, WA ST 64.34.410

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(b)(1), RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in *RCW 64.34.020(11);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

64.34.410. Public offering statement--General provisions, WA ST 64.34.410

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty;

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090; and

(oo) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

“This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element.”

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, the association's current reserve study, if any, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section.

Credits

[2008 c 115 § 10, eff. June 12, 2008; 2005 c 456 § 19, eff. August 1, 2005; 2004 c 201 § 11, eff. July 1, 2004; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

Notes of Decisions (1)

West's RCWA 64.34.410, WA ST 64.34.410

64.34.410. Public offering statement--General provisions, WA ST 64.34.410

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2014-11-18 10:28:15 AM Pacific Standard Time

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West's RCWA 64.34.415

64.34.415. Public offering statement--Conversion condominiums

Currentness

(1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410;

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A copy of the inspection and repair report prepared by an independent, licensed architect, engineer, or qualified building inspector in accordance with the requirements of RCW 64.55.090;

(c) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(d) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use.

Credits

[2005 c 456 § 18, eff. August 1, 2005; 1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

West's RCWA 64.34.415, WA ST 64.34.415

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West's RCWA 64.34.440

64.34.440. Conversion condominiums--Notice--Tenants--Relocation assistance

Effective: August 1, 2008

Currentness

(1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section;

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom;

(e)(i) A declarant shall pay relocation assistance, in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(A) Who do not elect to purchase a unit;

(B) Who are in lawful occupancy for residential purposes of a unit; and

(C) Whose annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of:

(I) The annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located; or

(II) If the condominium is not within a standard metropolitan statistical area, the annual median income for comparably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the

declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self-care; and

(B) "Elderly" means a person who is at least sixty-five years of age;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein.

Credits

[2008 c 113 § 1, eff. Aug. 1, 2008; 1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

West's RCWA 64.34.440, WA ST 64.34.440

64.34.440. Conversion condominiums--Notice--Tenants--Relocation..., WA ST 64.34.440

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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West's Revised Code of Washington Annotated
Title 64. Real Property and Conveyances (Refs & Annos)
Chapter 64.34. Condominium Act (Refs & Annos)
Article 4. Protection of Condominium Purchasers

West's RCWA 64.34.445

64.34.445. Implied warranties of quality--Breach

Currentness

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable

64.34.445. Implied warranties of quality--Breach, WA ST 64.34.445

person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value.

Credits

[2004 c 201 § 5, eff. July 1, 2004; 1992 c 220 § 26; 1989 c 43 § 4-112.]

Notes of Decisions (1)

West's RCWA 64.34.445, WA ST 64.34.445

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

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West's Revised Code of Washington Annotated
Title 64. Real Property and Conveyances (Refs & Annos)
Chapter 64.34. Condominium Act (Refs & Annos)
Article 4. Protection of Condominium Purchasers

West's RCWA 64.34.450

64.34.450. Implied warranties of quality--Exclusion--Modification--Disclaimer--Express written warranty

Currentness

(1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is effective, except that a declarant or dealer may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445.

Credits

[2004 c 201 s 6, eff. July 1, 2004; 1989 c 43 § 4-113.]

Notes of Decisions (5)

West's RCWA 64.34.450, WA ST 64.34.450

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