

Chapter 64.38 RCW
HOMEOWNERS' ASSOCIATIONS

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Speed enforcement: RCW 46.61.419.

RCW 64.38.005 Intent. (Effective until January 1, 2028.) The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 s 1.]

RCW 64.38.010 Definitions. (Effective until January 1, 2028.)

For purposes of this chapter:

(1) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.

(2) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above \$0 throughout the 30-year study period described under RCW 64.38.065.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Contribution rate" means, in a reserve study as described in RCW 64.38.065, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(7) "Effective age" means the difference between the estimated useful life and remaining useful life.

(8) "Electronic transmission" or "electronically transmitted" means any electronic communication not directly involving the physical transfer of a writing in a tangible medium, but that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.

(9) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the 30-year study period described under RCW 64.38.065, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(10) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(11) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(12) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32, 64.34, or 64.90 RCW.

(13) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(14) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(15) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(16) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(17) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(18) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.38.065 and 64.38.070.

(19) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(20) "Significant assets" means that the current replacement value of the major reserve components is 75 percent or more of the gross budget of the association, excluding the association's reserve account funds.

(21) "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

(22) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur. [2023 c 337 s 2. Prior: 2021 c 227 s 9; prior: 2011 c 189 s 7; 1995 c 283 s 2.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.015 Association membership. (Effective until January 1, 2028.) The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 s 3.]

RCW 64.38.020 Association powers. (Effective until January 1, 2028.) Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws, rules, and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;
- (12) Exercise any other powers conferred by the bylaws;
- (13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and
- (14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 s 4.]

Speed enforcement: RCW 46.61.419.

RCW 64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (Effective until January 1, 2028.) (1)

Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03A RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Except as provided in RCW 64.90.080, 64.90.405(1) (b) and (c), and 64.90.525, within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified

by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [2021 c 176 s 5232; 2019 c 238 s 222; 2011 c 189 s 8; 1995 c 283 s 5.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.028 Removal of discriminatory provisions in governing documents—Procedure. (Effective until January 1, 2028.) (1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that is void by reason of RCW 49.60.224; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly

or indirectly limits the use or occupancy of real property on the basis of a protected class under chapter 49.60 RCW.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals on the basis of a protected class under chapter 49.60 RCW; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of a protected class under chapter 49.60 RCW."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227:

(a) Any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records; or

(b) Any owner of property subject to a written instrument that contains a provision that is void pursuant to RCW 49.60.224 may record a restrictive covenant modification as defined in RCW 49.60.227.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227. [2018 c 65 s 2; 2006 c 58 s 2.]

Finding—Intent—2006 c 58: "The legislature finds that some homeowners' associations have governing documents that contain

discriminatory covenants, conditions, or restrictions that are void and unenforceable under both the federal fair housing amendments act of 1988 and RCW 49.60.224. The continued existence of these discriminatory covenants, conditions, or restrictions is contrary to public policy and repugnant to many property owners. It is the intent of chapter 58, Laws of 2006 to allow homeowners' associations to remove all remnants of discrimination from their governing documents." [2006 c 58 s 1.]

RCW 64.38.030 Association bylaws. (Effective until January 1, 2028.) Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 s 6.]

RCW 64.38.033 Flag of the United States—Outdoor display—Governing documents. (Effective until January 1, 2028.) (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 s 1.]

RCW 64.38.034 Political yard signs—Governing documents.

(Effective until January 1, 2028.) (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 s 1.]

RCW 64.38.035 Association meetings—Notice—Board of directors.

(Effective until January 1, 2028.) (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. The association must make available to each owner of record for examination and copying minutes from the previous association meeting not more than sixty days after the meeting. Minutes of the previous association meeting must be approved at the next association meeting in accordance with the association's governing documents.

(2) Not less than fourteen nor more than fifty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall cause notice of the meeting to be provided to each owner in accordance with this chapter.

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(4) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the

disclosure of information in violation of law or which is otherwise exempt from disclosure.

(5) Except as otherwise restricted by the governing documents, meetings of the association may be conducted by telephonic, video, or other conferencing process, if: (a) The meeting notice states the conferencing process to be used and provides information explaining how owners may participate in the conference directly or by meeting at a central location or conference connection; and (b) the process provides all owners the opportunity to hear or perceive the discussion and to comment. [2021 c 227 s 10; 2014 c 20 s 1; 2013 c 108 s 1; 1995 c 283 s 7.]

RCW 64.38.040 Quorum for meeting. (Effective until January 1, 2028.) Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 s 8.]

RCW 64.38.045 Financial and other records—Property of association—Copies—Annual financial statement—Accounts—Requirements for retaining. (Effective until January 1, 2028.) (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of \$50,000 or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if 67 percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(3) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds.

(4) An association must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its owners and board other than executive sessions, a record of all actions taken by the owners or

board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;

(c) The names of current owners, addresses used by the association to communicate with them, and the number of votes allocated to each lot;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Copies of contracts to which it is or was a party within the last seven years;

(i) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(j) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(k) Copies of insurance policies under which the association is a named insured;

(l) Any current warranties provided to the association;

(m) Copies of all notices provided to owners or the association in accordance with this chapter or the governing documents; and

(n) Ballots, proxies, absentee ballots, and other records related to voting by owners for one year after the election, action, or vote to which they relate.

(5) (a) Subject to subsections (6) through (8) of this section, and except as provided in (b) of this subsection, all records required to be retained by an association must be made available for examination and copying by all owners, holders of mortgages on the lots, and their respective authorized agents as follows, unless agreed otherwise:

(i) During reasonable business hours or at a mutually convenient time and location; and

(ii) At the offices of the association or its managing agent.

(b) The list of owners required to be retained by an association under subsection (4) (c) of this section is not required to be made available for examination and copying by holders of mortgages on the lots.

(6) Records retained by an association must have the following information redacted or otherwise removed prior to disclosure:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product

doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual lot files other than those of the requesting owner;

(i) Unlisted telephone number or electronic address of any owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(7) In addition to the requirements in subsection (6) of this section, an association must, prior to disclosure of the list of owners required to be retained by an association under subsection (4)(c) of this section, redact or otherwise remove the address of any owner or resident who is known to the association to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law.

(8)(a) Except as provided in (b) of this subsection, an association may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the owner's inspection.

(b) An owner is entitled to receive a free annual electronic or paper copy of the list retained under subsection (4)(c) of this section from the association.

(9) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the owner.

(10) An association is not obligated to compile or synthesize information.

(11) Information provided pursuant to this section may not be used for commercial purposes.

(12) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense.

(13) This section applies to records in the possession of the association on July 23, 2023, and to records created or maintained after July 23, 2023. An association has no liability under this section for records disposed of prior to July 23, 2023. [2023 c 409 s 3; 1995 c 283 s 9.]

RCW 64.38.050 Violation—Remedy—Attorneys' fees. (Effective until January 1, 2028.) Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 s 10.]

RCW 64.38.055 Governing documents—Solar panels. (Effective until January 1, 2028.) (1) The governing documents may not prohibit

the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(2) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roofline;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; or

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(3) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(4) For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on July 26, 2009. A provision in a governing document in effect on July 26, 2009, that is inconsistent with this section is void and unenforceable. [2009 c 51 s 1.]

RCW 64.38.057 Governing documents—Drought resistant landscaping, pollinator habitat, wildfire ignition resistant landscaping. (1) The governing documents may not prohibit the

installation of drought resistant landscaping, pollinator habitat, including beehives compliant with local regulation, or wildfire ignition resistant landscaping. However, the governing documents may include reasonable rules regarding the placement and aesthetic appearance of drought resistant landscaping, pollinator habitat, or wildfire ignition resistant landscaping, as long as the rules do not render the use of drought resistant landscaping, pollinator habitat, or wildfire ignition resistant landscaping unreasonably costly or otherwise effectively infeasible.

(2) If a property is located within the geographic designation of an order of a drought condition issued by the department of ecology under RCW 43.83B.405, an association may not sanction or impose a fine or assessment against an owner, or resident on the owner's property, for reducing or eliminating the watering of vegetation or lawns for the duration of the drought condition order.

(3) Nothing in this section may be construed to prohibit or restrict the establishment and maintenance of a fire buffer within the building ignition zone.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Building ignition zone" means a building and surrounding area up to two hundred feet from the foundation.

(b) "Drought resistant landscaping" means the use of any noninvasive vegetation adapted to arid or dry conditions, stone, or landscaping rock.

(c) "Firewise" means the firewise communities program developed by the national fire protection association, which encourages local solutions for wildfire safety by involving homeowners, community leaders, planners, developers, firefighters, and others in the effort to protect people and property from wildfire risks.

(d) "Pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators. "Pollinator habitat" does not include beehives, except for mason bee houses.

(e) "Wildfire ignition resistant landscaping" includes:

(i) Any landscaping tools or techniques, or noninvasive vegetation, that do not readily ignite from a flame or other ignition source; or

(ii) The use of firewise methods to reduce ignition risk in a building ignition zone. [2024 c 337 s 4; 2020 c 9 s 2.]

Reviser's note: RCW 64.38.057 was amended by 2024 c 337 s 4 without cognizance of its repeal by 2024 c 321 s 503, effective January 1, 2028. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Findings—Intent—2020 c 9: "(1) The legislature finds that:

(a) Water is a finite resource whose importance is heightened during the periodic drought conditions and increased wildfire risk that the state experiences;

(b) The maintenance of lawns of green grass during the summer months for aesthetic purposes can be responsible for a noteworthy portion of summer water use by households; and

(c) (i) In the event of a drought, state law already grants extraordinary powers to the department of ecology to manage water resources and provides for other policy responses to encourage efficient use of the state's limited water supplies;

(ii) However, in certain instances, property association rules do not take into account the public goal of making efficient use of water supplies while also protecting properties from wildfire. These association rules can prohibit private property owners from deciding to use low-water plants or other low-water landscaping practices in place of grass lawns. Association rules can also limit the use of landscaping materials that are both drought resistant and fire ignition resistant, making it difficult to create fire safe, drought resistant landscapes and establish defensible space. Similar laws also sometimes prohibit private property owners from allowing their grass to go dormant and brown.

(2) (a) Therefore, it is the intent of the legislature to empower private property owners and remove an obstacle to water use efficiency by prohibiting unreasonable homeowner association, common interest ownership association, and condominium association restrictions that limit private property owners' ability to deploy low-water landscaping techniques, while also ensuring private property owners' ability to create fire safe landscapes.

(b) It is also the intent of the legislature to encourage the use of landscaping design techniques that meet the highest standards for water efficiency in the design and construction of state-funded buildings." [2020 c 9 s 1.]

RCW 64.38.057 Governing documents—Drought resistant landscaping, wildfire ignition resistant landscaping. [2020 c 9 s 2.]

Reviser's note: RCW 64.38.057 was amended by 2024 c 337 s 4 without cognizance of its repeal by 2024 c 321 s 503, effective January 1, 2028. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

RCW 64.38.060 Adult family homes. (Effective until January 1, 2028.) (1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW; or

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on July 26, 2009. Any provision in a governing document in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 s 4.]

RCW 64.38.062 Electric vehicle charging stations. (Effective until January 1, 2028.) (1) (a) A homeowners' association may not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document, or master deed provision that:

(i) Effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in compliance with the requirements of this section and for the personal noncommercial use of a lot owner, within the boundaries of a lot or in a designated parking space; or

(ii) Is in conflict with the provisions of this section.

(b) Nothing in this section prohibits an association from imposing reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) A homeowners' association may require a lot owner to submit an application for approval for the installation of an electric vehicle charging station before installing the charging station.

(3) (a) If approval is required for the installation or use of an electric vehicle charging station, the application for approval must be processed and approved in the same manner as an application for approval of an architectural modification.

(b) The approval or denial of an application must be in writing and must not be willfully avoided or delayed.

(c) If an application is not denied in writing within 60 days from the date of receipt of the application, the application is deemed approved, unless that delay is the result of a reasonable request for additional information.

(d) A homeowners' association may not assess or charge a lot owner a fee for the placement of an electric vehicle charging station. An association may charge a reasonable fee for processing the application to approve the installation of an electric vehicle charging station, but only if such a fee exists for all applications for approval of architectural modifications.

(4) If approval is required for the installation or use of an electric vehicle charging station, a homeowners' association must approve the installation within the boundaries of a lot or in a designated parking space if the installation is reasonably possible and the lot owner agrees in writing to:

(a) Comply with the association's reasonable architectural standards applicable to the installation of the electric vehicle charging station;

(b) Engage an electrical contractor familiar with the standards for the installation of electric vehicle infrastructure to assess the existing infrastructure necessary to support the proposed electric vehicle charging station, identify additional infrastructure needs, and install the electric vehicle charging station;

(c) Register the electric vehicle charging station with the association within 30 days after installation;

(d) Pay for the electricity usage associated with the electric vehicle charging station and the required means to facilitate payment for the electricity; and

(e) Comply with the requirements of this section.

(5) (a) A lot owner must obtain any permit or approval for an electric vehicle charging station as required by the local government in which the common interest community is located and comply with all relevant building codes and safety standards.

(b) An electric vehicle charging station must meet all applicable health and safety standards and requirements imposed by national, state, or local authorities, and all other applicable zoning, land use or other ordinances, building codes, or land use permits.

(6) (a) Unless otherwise agreed to by written contract with the homeowners' association, a lot owner is responsible for the costs of installing an electric vehicle charging station.

(b) Electric vehicle charging station equipment that is installed at the lot owner's cost and is removable without damage to the property owned by others may be removed at the lot owner's cost. Nothing in this subsection requires the association to purchase the electric vehicle charging station.

(7) A lot owner must disclose to any prospective buyers of the lot:

(a) The existence of an electric vehicle charging station and the related responsibilities of the owner under this section; and

(b) Whether the electric vehicle charging station is removable and whether the owner intends to remove the charging station.

(8) The owner and each successive owner of an electric vehicle charging station is responsible for:

(a) Costs for the maintenance, repair, and replacement of the electric vehicle charging station up until the station is removed;

(b) Costs for damage to the electric vehicle charging station, any lot, common area, or limited common area resulting from the installation, use, maintenance, repair, removal, or replacement of the electric vehicle charging station;

(c) The cost of electricity associated with the electric vehicle charging station;

(d) If the owner decides to remove the electric vehicle charging station, costs for the removal and the restoration of the common area or limited common area after the removal; and

(e) Removing the electric vehicle charging station if reasonably necessary for the repair, maintenance, or replacement of the common area or limited common area.

(9) A homeowners' association may install an electric vehicle charging station in the common area for the use of all lot owners and, in that case, the association must develop appropriate terms of use for the charging station.

(10) (a) A homeowners' association that willfully violates this section is liable to the lot owner for actual damages, and shall pay a civil penalty to the lot owner in an amount not to exceed \$1,000.

(b) In any action by a lot owner requesting to have an electric vehicle charging station installed and seeking to enforce compliance with this section, the court shall award reasonable attorneys' fees and costs to any prevailing lot owner.

(11) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Designated parking space" means a parking space that is specifically designated for use by a particular lot owner, including a garage, a deeded parking space, and a parking space in a limited common area that is restricted for use by one or more lot owners.

(b) "Electric vehicle charging station" means a station that delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(c) "Reasonable restriction" means a restriction that does not significantly increase the cost of an electric vehicle charging station or significantly decrease its efficiency or specified performance. [2022 c 27 s 3.]

RCW 64.38.065 Reserve account and study. (Effective until January 1, 2028.) (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) Except as provided in RCW 64.90.080 and 64.90.545, 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 this chapter. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Except as provided in RCW 64.90.080 and 64.90.545, 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) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2019 c 238 s 223; 2011 c 189 s 9.]

Effective date—2011 c 189: "This act takes effect January 1, 2012." [2011 c 189 s 15.]

RCW 64.38.070 Reserve study—Requirements. (Effective until January 1, 2028.) (1) A reserve study as described in RCW 64.38.065 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component;

(b) The date of the study, and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

- (e) The percentage of the fully funded balance that the reserve account is funded;
 - (f) Special assessments already implemented or planned;
 - (g) Interest and inflation assumptions;
 - (h) Current reserve account contribution rates for a full funding plan and baseline funding plan;
 - (i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional;
 - (j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and
 - (k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.
- (3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, 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 reserve component." [2011 c 189 s 10.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.075 Reserve account—Withdrawals. (Effective until January 1, 2028.) An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section. [2011 c 189 s 11.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.080 Reserve study—Demand for preparation and inclusion in budget. (Effective until January 1, 2028.) (1) When more than three years have passed since the date of the last reserve study

prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter. [2011 c 189 s 12.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.085 Reserve account and study—Liability. (Effective until January 1, 2028.) Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter. [2011 c 189 s 13.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.090 Reserve study—Exemptions. (Effective until January 1, 2028.) Except as provided in RCW 64.90.080 and 64.90.545, an association is not required to follow the reserve study requirements under RCW 64.38.025 and RCW 64.38.065 through 64.38.085 if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association. [2019 c 238 s 224; 2011 c 189 s 14.]

Effective date—2011 c 189: See note following RCW 64.38.065.

RCW 64.38.095 Application to common interest communities. (Effective until January 1, 2028.) (1) This chapter does not apply to common interest communities as defined in RCW 64.90.010:

(a) Created on or after July 1, 2018; or
(b) That have amended their governing documents to provide that chapter 64.90 RCW will apply to the common interest community pursuant to RCW 64.90.370.

(2) Pursuant to RCW 64.90.365, the following provisions of chapter 64.90 RCW apply, and any inconsistent provisions of this chapter do not apply, to a common interest community created before July 1, 2018:

- (a) RCW 64.90.370;
- (b) RCW 64.90.405(1) (b) and (c);
- (c) RCW 64.90.525; and
- (d) RCW 64.90.545. [2024 c 321 s 435; 2019 c 238 s 225; 2018 c 277 s 505.]

Effective date—2018 c 277: See RCW 64.90.910.

RCW 64.38.100 Liens for unpaid assessments—Notice of delinquency—Second notice. (Effective until January 1, 2025.) (1) (a) If the governing documents of an association provide for a lien on the lot of any owner for unpaid assessments, the association shall include the following first preforeclosure notice when mailing to the lot owner by first-class mail the first notice of delinquency to the lot address and to any other address that the owner has provided to the association:

**THIS IS A NOTICE OF DELINQUENCY FOR PAST DUE ASSESSMENTS
FROM THE HOMEOWNERS' ASSOCIATION TO WHICH YOUR HOME BELONGS.
THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR LOSING
YOUR HOME.
CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW
to assess your situation and refer you to mediation if you might
benefit. DO NOT DELAY.
BE CAREFUL of people who claim they can help you. There are many
individuals and businesses that prey upon borrowers in distress.
REFER TO THE CONTACTS BELOW for sources of assistance.**

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission
Telephone: Website:
The United States Department of Housing and Urban Development
Telephone: Website:
The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys
Telephone: Website:

The association shall obtain the toll-free numbers and website information from the department of commerce for inclusion in the notice.

(b) If, when a delinquent account is referred to an association's attorney, the first preforeclosure notice required under (a) of this subsection has not yet been mailed to the lot owner, the association

or the association's attorney shall mail the first preforeclosure notice to the lot owner in order to satisfy the requirement in (a) of this subsection.

(c) Mailing the first preforeclosure notice pursuant to (a) of this subsection does not satisfy the requirement in subsection (2)(b) of this section to mail a second preforeclosure notice at or after the date that assessments have become past due for at least 90 days. The second preforeclosure notice may not be mailed sooner than 60 days after the first preforeclosure notice is mailed.

(2) If the governing documents of an association provide for a lien on the lot of any owner for unpaid assessments, the association may not commence an action to foreclose the lien unless:

(a) The lot owner, at the time the action is commenced, owes at least a sum equal to the greater of:

(i) Three months or more of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account; or

(ii) \$2,000 of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account;

(b) At or after the date that assessments have become past due for at least 90 days, but no sooner than 60 days after the first preforeclosure notice required in subsection (1)(a) of this section is mailed, the association has mailed, by first-class mail, to the owner, at the lot address and to any other address which the owner has provided to the association, a second notice of delinquency, which must include a second preforeclosure notice that contains the same information as the first preforeclosure notice provided to the lot owner pursuant to subsection (1)(a) of this section. The second preforeclosure notice may not be mailed sooner than 60 days after the first preforeclosure notice required in subsection (1)(a) of this section is mailed;

(c) At least 180 days have elapsed from the date the minimum amount required in (a) of this subsection has accrued; and

(d) The board approves commencement of a foreclosure action specifically against that lot.

(3) Every aspect of a collection, foreclosure, sale, or other conveyance under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable. [2023 c 214 s 5; 2021 c 222 s 7.]

Expiration date—2023 c 214 ss 1, 3, 5, and 7: See note following RCW 64.32.200.

Expiration date—Effective date—2021 c 222 ss 1, 3, 5, and 7: See notes following RCW 64.90.485.

RCW 64.38.100 Liens for unpaid assessments—Notice of delinquency—Second notice. (Effective January 1, 2025, until January 1, 2028.) (1)(a) If the governing documents of an association provide for a lien on the lot of any owner for unpaid assessments, the association shall include the following first preforeclosure notice when mailing to the lot owner by first-class mail the first notice of

delinquency to the lot address and to any other address that the owner has provided to the association:

THIS IS A NOTICE OF DELINQUENCY FOR PAST DUE ASSESSMENTS FROM THE HOMEOWNERS' ASSOCIATION TO WHICH YOUR HOME BELONGS. THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR LOSING YOUR HOME.

CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you might benefit. **DO NOT DELAY.**

BE CAREFUL of people who claim they can help you. There are many individuals and businesses that prey upon borrowers in distress. **REFER TO THE CONTACTS BELOW** for sources of assistance.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

- The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission
Telephone: Website:
- The United States Department of Housing and Urban Development
Telephone: Website:
- The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys
Telephone: Website:

The association shall obtain the toll-free numbers and website information from the department of commerce for inclusion in the notice.

(b) If, when a delinquent account is referred to an association's attorney, the first preforeclosure notice required under (a) of this subsection has not yet been mailed to the lot owner, the association or the association's attorney shall mail the first preforeclosure notice to the lot owner in order to satisfy the requirement in (a) of this subsection.

(c) Mailing the first preforeclosure notice pursuant to (a) of this subsection does not satisfy the requirement in subsection (2)(b) of this section to mail a second preforeclosure notice at or after the date that assessments have become past due for at least 90 days. The second preforeclosure notice may not be mailed sooner than 60 days after the first preforeclosure notice is mailed.

(2) If the governing documents of an association provide for a lien on the lot of any owner for unpaid assessments, the association may not commence an action to foreclose the lien unless:

- (a) The lot owner, at the time the action is commenced, owes at least a sum equal to the greater of:
 - (i) Three months or more of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account; or
 - (ii) \$2,000 of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account;
- (b) At or after the date that assessments have become past due for at least 90 days, but no sooner than 60 days after the first

preforeclosure notice required in subsection (1)(a) of this section is mailed, the association has mailed, by first-class mail, to the owner, at the lot address and to any other address which the owner has provided to the association, a second notice of delinquency, which must include a second preforeclosure notice that contains the same information as the first preforeclosure notice provided to the lot owner pursuant to subsection (1)(a) of this section. The second preforeclosure notice may not be mailed sooner than 60 days after the first preforeclosure notice required in subsection (1)(a) of this section is mailed;

(c) At least 90 days have elapsed from the date the minimum amount required in (a) of this subsection has accrued; and

(d) The board approves commencement of a foreclosure action specifically against that lot.

(3) Every aspect of a collection, foreclosure, sale, or other conveyance under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable. [2023 c 214 s 6; 2021 c 222 s 8; 2021 c 222 s 7.]

Effective date—2023 c 214 ss 2, 4, 6, and 8: See note following RCW 64.32.200.

Effective date—2021 c 222 ss 2, 4, 6, and 8: See note following RCW 64.90.485.

RCW 64.38.110 Notice. (Effective until January 1, 2028.) (1) Notwithstanding any inconsistent provision in the governing documents, notice to the association of lot owners, board, or any lot owner or occupant of a lot under this chapter shall be in writing and shall be provided to the recipient by personal delivery, public or private mail or delivery service, or by electronic transmission as provided in this section: PROVIDED, That if this chapter requires different or additional notice requirements for particular circumstances, those requirements shall apply.

(2) Notice in a tangible medium shall be provided as follows:

(a) Notice to the association or board shall be addressed to the association's registered agent at its registered office, to the association at its principal office shown in its most recent annual report, or to an address provided by the association to the lot owners.

(b) Notice to a lot owner or occupant shall be addressed to the lot address unless the owner has requested, in a writing delivered to the association, that notices be sent to an alternate address.

(3) Notice in an electronic transmission shall be provided as follows:

(a) Notice to the association, the board, or lot owners by electronic transmission is effective only upon those who have consented, in writing, to receive electronically transmitted notices under this chapter and have designated the address, location, or system to which such notices may be electronically transmitted, provided that such notice otherwise complies with any other requirements of this chapter and applicable law.

(b) Notice under this subsection includes any materials that accompany the notice.

(c) Owners who have consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the association in writing.

(d) The consent of any lot owner is revoked if the association is unable to electronically transmit two consecutive notices and this inability becomes known to the secretary of the association of lot owners or any other person responsible for giving the notice. The inadvertent failure by the association of lot owners to treat this inability as a revocation does not invalidate any meeting or other action.

(e) Notice to lot owners who have consented to receipt of electronically transmitted notices may be provided by posting the notice on an electronic network and delivering to the owner separate notice of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(4) Notice is effective as follows:

(a) Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

(b) Notice provided in an electronic transmission is effective as of the date it:

(i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(ii) Has been posted on an electronic network and separate notice of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

(5) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

(6) This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b). [2023 c 470 s 3017; 2021 c 227 s 11.]

Explanatory statement—2023 c 470: See note following RCW 10.99.030.

RCW 64.38.120 Voting—In person, absentee ballots, proxies.

(Effective until January 1, 2028.) (1) Owners may vote at a meeting in person, by absentee ballot pursuant to subsection (3)(d) of this section, or by a proxy pursuant to subsection (5) of this section.

(2) When a vote is conducted without a meeting, owners may vote by ballot pursuant to subsection (6) of this section.

(3) At a meeting of owners the following requirements apply:

(a) Owners or their proxies who are present in person may vote by voice vote, show of hands, standing, written ballot, or any other method for determining the votes of owners, as designated by the person presiding at the meeting.

(b) If only one of several owners of a lot is present, that lot owner is entitled to cast all the votes allocated to that lot. If more than one of the lot owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in

interest of the lot owners, unless the declaration expressly provides otherwise. There is a majority agreement if any one of the lot owners casts the votes allocated to the lot without protest being made promptly to the person presiding over the meeting by any of the other lot owners of the lot.

(c) Unless a greater number or fraction of the votes in the association is required under this chapter or the declaration or organizational documents, a majority of the votes cast determines the outcome of any action of the association.

(d) Whenever proposals or board members are to be voted upon at a meeting, an owner may vote by duly executed absentee ballot if:

(i) The name of each candidate and the text of each proposal to be voted upon are set forth in a writing accompanying or contained in the notice of meeting; and

(ii) A ballot is provided by the association for such purpose.

(4) When an owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the owner having the right to do so.

(5) Except as provided otherwise in the declaration or organizational documents, the following requirements apply with respect to proxy voting:

(a) Votes allocated to a lot may be cast pursuant to a directed or undirected proxy duly executed by a lot owner in the same manner as provided in RCW 24.06.110.

(b) If a lot is owned by more than one person, each lot owner of the lot may vote or register protest to the casting of votes by the other lot owners of the lot through a duly executed proxy.

(c) An owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary or the person presiding over a meeting of the association or by delivery of a subsequent proxy. The death or disability of an owner does not revoke a proxy given by the owner unless the person presiding over the meeting has actual notice of the death or disability.

(d) A proxy is void if it is not dated or purports to be revocable without notice.

(e) Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(6) Unless prohibited or limited by the declaration or organizational documents, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(a) The association must notify the owners that the vote will be taken by ballot.

(b) The notice must state:

(i) The time and date by which a ballot must be delivered to the association to be counted, which may not be fewer than fourteen days after the date of the notice, and which deadline may be extended in accordance with (g) of this subsection;

(ii) The percent of votes necessary to meet the quorum requirements;

(iii) The percent of votes necessary to approve each matter other than election of board members; and

(iv) The time, date, and manner by which owners wishing to deliver information to all owners regarding the subject of the vote may do so.

(c) The association must deliver a ballot to every owner with the notice.

(d) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(e) A ballot cast pursuant to this section may be revoked only by actual notice to the association of revocation. The death or disability of an owner does not revoke a ballot unless the association has actual notice of the death or disability prior to the date set forth in (b) (i) of this subsection.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(g) If the association does not receive a sufficient number of votes to constitute a quorum or to approve the proposal by the date and time established for return of ballots, the board may extend the deadline for a reasonable period not to exceed eleven months upon further notice to all members in accordance with (b) of this subsection. In that event, all votes previously cast on the proposal must be counted unless subsequently revoked as provided in this section.

(h) A ballot or revocation is not effective until received by the association.

(i) The association must give notice to owners of any action taken pursuant to this subsection within a reasonable time after the action is taken.

(j) When an action is taken pursuant to this subsection, a record of the action, including the ballots or a report of the persons appointed to tabulate such ballots, must be kept with the minutes of meetings of the association.

(7) If the governing documents require that votes on specified matters affecting the common interest community be cast by lessees rather than owners of leased lots:

(a) This section applies to lessees as if they were owners;

(b) Owners that have leased their lots to other persons may not cast votes on those specified matters; and

(c) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were owners.

(8) Owners must also be given notice, in the manner provided in RCW 64.38.110, of all meetings at which lessees may be entitled to vote.

(9) In any vote of the lot owners, votes allocated to a lot owned by the association must be cast in the same proportion as the votes cast on the matter by lot owners other than the association. [2021 c 227 s 12.]

RCW 64.38.130 Tenant screening. (Effective until January 1, 2028.) (1) Except as otherwise prohibited by law, and subject to the limitations in subsection (2) of this section, a homeowners' association may:

(a) Require any lot owner intending to lease the owner's lot to use a tenant screening service or obtain background information, including criminal history, on a prospective tenant, at the owner's sole cost and expense, prior to the owner entering into a lease agreement with a prospective tenant; and

(b) Require proof that the tenant screening requirement has been fulfilled or that the background information on a prospective tenant has been obtained by the owner intending to lease the owner's lot.

(2) An association may not require that a copy of the tenant screening report or any background information pertaining to a tenant be furnished to the association. [2023 c 23 s 3.]

RCW 64.38.140 Licensed family home child care or licensed child day care center—Regulations—Liability. (Effective until January 1, 2028.)

(1) A homeowners' association may not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document, or master deed provision that effectively prohibits, unreasonably restricts, or limits, directly or indirectly, the use of a lot as a licensed family home child care operated by a family day care provider or as a licensed child day care center, except as provided in subsection (2) of this section.

(2) (a) Nothing in this section prohibits a homeowners' association from imposing reasonable regulations on a family home child care or a child day care center including, but not limited to, architectural standards, as long as those regulations are identical to those applied to all other lots within the same association as the family home child care or the child day care center.

(b) An association may require that only a lot with direct access may be used as a family home child care or child day care center. Direct access must be through publicly accessible common areas.

(c) An association may adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document, or master deed provision that requires a family home child care or a child day care center operating out of a lot within the association to:

(i) Be licensed under chapter 43.216 RCW;

(ii) Indemnify and hold harmless the association against all claims, whether brought by judicial or administrative action, relating to the operation of the family home child care or the child day care center, excluding claims arising in common areas that the association is solely responsible for maintaining under the governing documents;

(iii) Obtain a signed waiver of liability releasing the association from legal claims directly related to the operation of the family home child care or the child day care center from the parent, guardian, or caretaker of each child being cared for by the family home child care or the child day care center. However, an association may not require that a waiver of liability under this subsection be notarized; and

(iv) Obtain day care insurance as defined in RCW 48.88.020 or provide self-insurance pursuant to chapter 48.90 RCW, consistent with the requirements in RCW 43.216.700.

(3) A homeowners' association that willfully violates this section is liable to the family day care provider or the child day care center for actual damages, and shall pay a civil penalty to the family day care provider or the child day care center in an amount not to exceed \$1,000.

(4) For the purposes of this section, the terms "family day care provider" and "child day care center" have the same meanings as in RCW 43.216.010. [2023 c 203 s 3.]

Effective date—2023 c 203: See note following RCW 64.32.310.

RCW 64.38.150 New associations minimum density. (Effective until January 1, 2028.) Governing documents of associations within cities subject to the middle housing requirements in RCW 36.70A.635 that are created after July 23, 2023, may not actively or effectively prohibit the construction, development, or use of additional housing units as required in RCW 36.70A.635. [2023 c 332 s 12.]

Finding—2023 c 332: See note following RCW 36.70A.635.

RCW 64.38.160 New associations—Accessory dwelling units. (Effective until January 1, 2028.) (1) Except governing documents of associations created to protect public health and safety, and ground and surface waters from on-site wastewater, governing documents of associations created after July 23, 2023, and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under RCW 36.70A.681.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction. [2023 c 334 s 11.]

RCW 64.38.170 Occupancy limits. (Expires January 1, 2028.) Except for occupancy limits on short-term rentals as defined in RCW 64.37.010 and any lawful limits on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code, city ordinance, or county ordinance, a homeowners' association may not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document, or master deed provision that regulates or limits the number of unrelated persons that may occupy a lot. [2024 c 139 s 3.]

Contingent expiration date—2024 c 139 ss 1-3: See note following RCW 64.32.340.

RCW 64.38.180 Heat pumps. (Expires January 1, 2028.) (1)(a) A homeowners' association may not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document, or master deed provision that:

(i) Effectively prohibits or unreasonably restricts the installation or use of a heat pump in compliance with the requirements of this section and for the personal use of an owner within the boundaries of a lot; or

(ii) Is in conflict with the provisions of this section.

(b) Nothing in this section prohibits an association from imposing reasonable restrictions on heat pumps.

(c) This section must not be construed to permit installation by an owner of heat pump equipment on or in common areas without approval of the board of directors.

(2) A homeowners' association may require an owner to submit an application for approval for the installation of a heat pump before installing the heat pump.

(3) (a) If approval is required for the installation of a heat pump, the application for approval must be processed and approved in the same manner as an application for approval of an architectural modification.

(b) The approval or denial of an application must be in writing and must not be willfully avoided or delayed.

(c) If an application is not denied in writing within 60 days from the date of receipt of the application, the application is deemed approved, unless that delay is the result of a reasonable request for additional information.

(d) An association may not assess or charge an owner a fee for the installation of a heat pump. An association may charge a reasonable fee for processing the application to approve the installation of a heat pump, but only if such a fee exists for all applications for approval of architectural modifications.

(4) If approval is required for the installation of a heat pump, a homeowners' association must approve the installation if the installation is reasonably possible and the owner agrees in writing to:

(a) Comply with the association's reasonable architectural standards applicable to the installation of the heat pump;

(b) Engage a heating, ventilation, and air conditioning (HVAC) contractor familiar with the standards for the installation of heat pumps to assess the existing infrastructure necessary to support the proposed heat pump, identify additional infrastructure needs, and install the heat pump; and

(c) Comply with the requirements of this section.

(5) (a) An owner must obtain any permit or approval for a heat pump as required by the local government in which the common interest community is located and comply with all relevant building codes and safety standards.

(b) A heat pump must meet all applicable health and safety standards and requirements imposed by national, state, or local authorities, and all other applicable zoning, land use or other ordinances, building codes, or land use permits.

(6) (a) Unless otherwise agreed to by written contract with the homeowners' association, an owner is responsible for the costs of installing a heat pump.

(b) Heat pump equipment that is installed at the owner's cost and is removable without damage to the property owned by others may be removed at the owner's cost.

(7) The owner and each successive owner of the heat pump is responsible for:

(a) Costs for the maintenance, repair, and replacement of the heat pump up until the heat pump is removed;

(b) Costs for damage to the heat pump, any unit, common area, or limited common area resulting from the installation, use, maintenance, repair, removal, or replacement of the heat pump;

(c) If the owner decides to remove the heat pump, costs for the removal and the restoration of the common areas or limited common areas after the removal; and

(d) Removing heat pump equipment if reasonably necessary for the repair, maintenance, or replacement of the common area or limited common area.

(8) (a) A homeowners' association that willfully violates this section is liable to the owner for actual damages, and shall pay a civil penalty to the owner in an amount not to exceed \$1,000.

(b) In any action by an owner requesting to have a heat pump installed and seeking to enforce compliance with this section, the court shall award reasonable attorneys' fees and costs to any prevailing owner.

(9) For the purposes of this section:

(a) "Heat pump" means a heating or refrigerating system used to transfer heat. The heat pump condenser and evaporator may change roles to transfer heat in either direction. By receiving the flow of air or other fluid, a heat pump is used to cool or heat.

(b) "Reasonable restriction" means a restriction that does not significantly increase the cost of a heat pump or significantly decrease its efficiency or specified performance. [2024 c 128 s 3.]

Contingent expiration date—2024 c 128 ss 1-3: See note following RCW 64.32.350.