

OVERVIEW WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT (WUCIOA™)

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BACKGROUND

Washington Acts. Homeowners' Association Act (**HOAA**), enacted 1995, to provide consistent laws for formation and legal administration of homeowners' associations. Horizontal Property Regimes Act (**HPR**), enacted 1963, applies to residential condominiums created on or before July 1, 1990. Washington Condominium Act (**WCA**), enacted 1989, applies to condominiums created after July 1, 1990.

Uniform Act. Uniform Common Interest Ownership Act (**UCIOA**) originally promulgated 1982, by National Uniform Law Commission (**ULC**) and amended to reflect experience in states that adopted UCIOA or its predecessor acts and other analyses. UCIOA is a comprehensive act that succeeds and combines provisions from Uniform Condominium Act, Uniform Planned Community Act, and Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs formation, management, and termination of common interest communities (**CIC's**) including condominiums, plat communities, and cooperatives. UCIOA provides uniformity among all three forms of ownership.

SUMMARY (Effective Date: **July 1, 2018**)

1. Applicability and General Provisions. WUCIOA applicable to CIC's (condominiums, cooperatives, and plat communities) created **after July 1, 2018**. Pre-existing CICs may amend governing documents to adopt WUCIOA provisions. WUCIOA has limited applicability to nonresidential plat communities. Sections regarding adoption of budgets and process for existing CIC to come under WUCIOA apply prospectively to all CICs. Except as expressly provided in WUCIOA, effect of provisions of WUCIOA may not be varied by agreement and rights conferred may not be waived. A court may refuse to enforce unconscionable contracts or terms. An obligation of good faith is imposed.

2. Creation and Amendments. A CIC is created by recording a declaration and map complying with detailed WUCIOA requirements. With certain exceptions, declaration may be amended by a 67 percent or more vote. Amendments increasing special declarant's rights, increasing number of units, changing boundaries, or allocating interests require 90 percent or more vote.

3. Management. Association must be organized as a profit or non-profit corporation or limited liability company; members are exclusively unit owners. Association must have a board, and extensive association and board duties and powers are provided. Officers and board members have same duty of care and loyalty as corporate officers or directors, and are subject to corporate conflict of interest rules. Board cannot amend declaration or bylaws, terminate CIC, elect board members, or determine board qualifications. Unit owners may remove an officer or board member upon majority vote of unit owners or two-thirds vote at a meeting. Board may remove an officer elected by board at any time, with or without cause. Provisions made for periods where declarant controls association, and for process after termination of declarant's control.

4. Meetings and Notices. Association meeting must be held once yearly. Special meetings may be called by president, majority of board, or 20 percent or more of unit owners. Notices to owners of meetings are required. Owners must be allowed to comment at owner and board meetings. Board meetings must be open to owners, except for limited executive sessions. Notice by board to unit owners is required prior to and after board's adoption, amendment, or repeal of reasonable rules. Declaration may allow for adoption of rules on construction and design criteria and aesthetic standards. Participation by board members through telephonic or other means, and limited unanimous board consent actions are allowed. Action to set aside board action must be brought within 90 days of later of minute approval or distribution to owners.

5. Voting. Unit owners may vote in person, by proxy, by absentee ballot, or without a meeting. Voting without a meeting requires a notice and deadlines for receipt of votes may be extended up to 11 months. governing documents may require that votes be cast by lessees in certain circumstances. Majority vote is required unless a greater amount is required under organizational documents or WUCIOA. Provisions for transmitting notices, including electronic transmission with consent, are provided. A quorum is 20 percent of owners, in person, by proxy or by absentee ballot, and for board, a majority of board members.

6. Accounts, Assessments, Liens, and Records. Association must properly maintain its accounts and reconcile them annually. Provisions are made for assessments and priority of association liens for past-due amounts. Association must maintain certain financial and other records. Such records are available for examination and copying by unit owners and mortgagees during reasonable business hours. Certain records may be withheld. Association must prepare annual financial statements on accrual method. An association with an annual assessment of \$50,000 or more must have financial statements audited by a Certified Public Accountant. Association with an annual assessment of less than \$50,000 may waive audit requirement with majority vote. Funds must be in a separate account and not commingled.

7. Budgets. Board must set meeting not less than 14 days and not more than 50 days after adopting budget. Unless a majority of votes reject budget, it is ratified. If budget is rejected, last ratified budget continues until another budget is ratified. Items required in budget are provided.

8. Unit Alteration. Unit owner may alter unit provided alteration does not impair structural integrity, mechanical or electrical systems, or lessen supports. Unit owner acquiring all or part of adjoining unit may remove or add partitions. Mobile home title elimination is allowed. Unit boundaries may be altered and units may be subdivided or combined under certain circumstances. Board must approve certain requests and fees and costs may be charged.

9. Flags, Political Signs, and Solar Panels. Association may not prohibit display of flags or political signs on or within a unit or limited common element or a solar panel on or within a unit. Association may make reasonable restrictions. Association may adopt rules that affect use or occupancy of or behavior in residential units only to (1) implement a provision of declaration; (2) regulate any behavior in or occupancy of a unit that violates declaration or adversely affects use and enjoyment of other units or common elements by others; and (3) restrict leasing of residential units to meet lenders' underwriting requirements.

10. Reserve Studies. Residential CICs must prepare an annual reserve study unless they have nominal reserve costs or cost of study exceeds 10 percent of annual budget. At least every third year study must be prepared by a professional upon visual site inspection. When more than three years have passed, 20 percent of owners may demand that board include reserve study cost in next budget. If budget is not rejected, board must arrange for study. Owners may bring an action to enforce requirements and request attorneys' fees and costs. Association required to have a reserve study must maintain an income-earning reserve account. Officers, board members, and advisers are immune from liability related to reserve accounts and studies.

11. Information to Purchasers and Tenants' Rights in Conversion. Detailed public offering statement (POS) must be provided to purchaser by declarant. After receipt, purchaser has 7 days to cancel sale and may extend sale to not more than 7 days after receipt. Unit owner must provide a resale certificate to purchaser before executing sale contract. Contract is voidable by purchaser for 5 days after receipt. Within 10 days after owner's request, Association must provide resale certificate and may charge fee not to exceed \$275 for certificate and \$100 for updates. Unit owner is not liable for erroneous information in certificate. Purchaser is not liable for assessments greater than those in certificate. Tenant rights are provided for buildings being converted to a CIC.

12. Express Warranties. Express warranties of quality provisions only apply to condominiums. Express warranties, if relied upon by purchaser, are created by written affirmation of fact or promise that a purchaser may put a unit only to a specified use. No formal words or intentions are necessary. Purchaser may not rely on representation unless made in POS or a record signed by declarant or their agent identified in POS.

13. Implied Warranties. Implied warranties of quality only apply to condominiums. Declarants and dealers impliedly warrant that: (1) unit will be in as good of condition at closing as at time of contract; (2) units or common elements are suitable for ordinary use; (3) improvements will be free from defective materials, constructed in accordance with applicable law, according to sound engineering and construction standards, and in workmanlike manner; and (4) for residential, existing use is lawful.

Plaintiff must show that alleged breach adversely affected or will adversely affect performance of unit or common element. Adverse affect must be more than technical and be significant to reasonable person. Damages are cost of repair or loss in market value. Implied warranties may be excluded or modified by written agreement of parties. However, for residential CICs, a specific defect may be disclaimed if it is a specific, described defect and if declarant knows or should have known of defect and defect and its expected effect are described in a bold-faced, capitalized, underlined, or otherwise conspicuous manner.

14. Statute of Limitations for Warranties. Conveyances transfer warranties to purchasers. Statute of limitations is 4 years and may not be modified. Attorneys' fees and costs may be awarded. Parties may agree to binding or nonbinding alternative dispute resolution.

15. Termination. Termination of a CIC requires 80 % vote and recorded termination agreement. Agreement may require sale of CIC in CICs with horizontal unit boundaries, and sale terms must be provided in agreement. Proceeds of sale are distributed to unit owners and lienholders in proportion to respective interests. Any interest in CIC not sold vests in unit owners in proportion to their respective interests.

16. Miscellaneous. Secured lender rights provided for in declaration. Declaration may provide for master association. Board is not liable for actions of master association. Powers may be delegated to a subassociation.

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You can contact Pete for questions concerning WUCIOA and assistance in preparing your project documents.