

Adopting & Administering Rules, Bylaws & CC&R's

Presented By:
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Overview

- Levels of Authority
- Powers of Association
- Obligations of Board
- Association Meeting and Budget Procedures
- Declaration and amendments
- Bylaws and amendments
- Adopting Rules
- Questions

Levels of Authority

- Governing Law (Condo Act, Planned Community Act; Corporate Law; Common Law)
- Declaration
- Bylaws
- Rules & Regulations
- Committee Decisions
- Prior Actions

Governing Law

Washington & Oregon

- Condominiums
 - Washington Condominium Act (RCW 64.34)
 - Oregon Condominium Act (ORS Ch. 100)
- HOA/PUD's
 - Washington Homeowners' Association Act (RCW 64.38)
 - Oregon Planned Community Act (ORS Ch. 94)

Statutory Powers of the Association Washington and Oregon

Statutes are similar for both states and for both condominiums and PUD's.

- Bylaws & Rules: adopt and amend
- Budgets & Expenditures, Reserves & Assessments: adopt and amend
- Agents: hire, discharge, contract with managing agents, other employees, agents and independent contractors.

Powers of the Association cont'd.

- Contracts: make contracts, terminate contracts, and incur liabilities
 - Contracts entered into by declarant prior to turnover may be terminated by the Association without penalty upon 30 days' written notice not later than 60 days after the turnover meeting in Oregon and any time after turnover on 90 days' notice in Washington.
- Maintenance & Repair: regulate the use, maintenance repair, replacement and modification of common elements.
(Maintenance plans are required in Oregon only)
- Property Rights: grant easements, leases, licenses through or over the common elements
- Rents: impose and collect any payments, fees or charges for the use, rental or operation of any common element – other than ltd. common elements
- Assessments and Fines: can levy fines only upon notice and opportunity to be heard and after all other procedures set forth in governing docs have been followed

Powers of the Association cont'd.

- Litigation: institute, defend, intervene in litigation:
 - Washington Condos: on behalf of 2 or more unit owners on matters affecting the condominium
 - Washington PUD's: on behalf of 2 or more owners on matters affecting the association
 - Oregon Condos: on matters relating to or affecting the common elements
 - Oregon PUD's: on matters relating to or affecting the common property
- Exercise any other powers conferred by the Declaration and Bylaws.
- *Exercise any other powers necessary and proper for the governance and operation of the association.*

Duties of the Board

- To Act on behalf of the Association
 - “better judgment” rule
 - Fiduciary obligations
- Authority to establish policies and supervise their implementation
- Recordkeeping, Budgeting
 - RCW 64.34.308; ORS 100.417 – Duties and powers of Condominium Board
 - RCW 64.38.025; 94.640 – Duties and powers of PUD Board

Association Meetings

Washington

- Annual and Special Meeting
 - No particular provision for absentee ballots (look at Governing Documents)
 - Special Meetings can be called in several ways:
 - By Board President
 - By majority vote of Board
 - By vote of 10% (HOA) or 20% (COA) of owners' voting interests
 - Notice must be *hand delivered or mailed* to the address of each owner and any other owner-designated address
- Notice (HOA) (see Decl/Bylaws for COA)
 - between 14 and 60 days
 - Time and place, items on the agenda and votes

Association Meetings

Oregon

- Annual and Special Meeting
 - Special Meetings can be called in several ways:
 - By Board President
 - By majority vote of Board
 - By vote of percentage of owners' voting interests as set forth in the bylaws. Percentage must be at least 10% and no more than 50%. If not included in the bylaws, it is 30%
 - Notice must be *hand delivered or mailed* to the address of each owner and any other owner-designated address
- Notice
 - between 10 and 50 days
 - Time and place, items on the agenda and votes

Meeting Procedures

Washington

- Association Meeting Quorum:
 - # of people entitled to cast 25% of votes *and* who are present in person or by proxy *at the beginning of the meeting* unless the Bylaws or Declaration provide a different standard. (RCW 64.34.336) (WCA)
 - 34% of the votes of the association are present or by proxy (RCW 64.38.040) (HOA)
- Board Meeting Quorum: 50% of voting members present at beginning of meeting (WCA).
- Proxies, Absentee Ballots, voting by mail - check the governing documents

Meeting Procedures

Oregon

- Association Meeting Quorum:
 - # of people entitled to cast 20% of votes *and* who are present in person or by proxy *at the beginning of the meeting* unless the Bylaws provide a different standard. (ORS 94.655; 100.408)
- Board Meeting Quorum: 50% of voting members present at beginning of meeting
- Written ballots are authorized in lieu of meetings except for turnover meetings and annual meetings. (ORS 94.647; 100.425) Must give 10 days' notice before mailing the ballots
- Proxy voting or absentee ballots are authorized.

Board Meetings

Washington

- Most meetings must be open to owners RCW 64.38.035(2); not addressed in condo act
- Executive Session [closed] meetings may be for the purpose of:
 - Consultation with counsel
 - Considering communication with legal counsel
 - Personnel matters
 - Discussion of possible violation of governing documents
 - Discussion of possible owner liability to an association
 - Discussion of likely or pending litigation

Board Meetings

Oregon

- Most meetings must be open to owners 94.640; 100.420(1)
- Executive Session [closed] meetings may be for the purpose of:
 - Consultation with counsel
 - Personnel matters
 - Negotiation of third party contracts
 - Discussion of collection of unpaid assessments

Budgets

Washington

- Within 30 days after adopting proposed budget, the Board must:
 - provide a summary of the budget to all unit owners; and
 - set a date for a meeting to ratify the budget.
- The ratification meeting must occur between 14 and 60 days after mailing the summary
- No quorum required to ratify the budget.
- If rejected or required notice not given, then the budget last ratified shall be continued.

Budgets

Oregon

- Within 30 days after adopting proposed budget, the Board must:
 - provide a summary of the budget to all unit owners;
 - Adoption process is contained in bylaws
- If the board fails to adopt a budget, the budget for the previous year remains in effect

Declaration Contents

Oregon & Washington

- ORS 100.105; 94.580
- RCW 64.34.220 (no corresponding statute in Washington Homeowner Act)
 - Name of project
 - General description of units and buildings
 - Description of general common elements and allocation of limited common elements
 - Vote allocations
 - Voting requirements for amending the declaration
 - Restrictions on alienation

Statute vs. Declaration

Washington

- Condominium Act:

“Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived.”

RCW 64.34.030

Statute vs. Declaration

Oregon

- ORS 100.122
 - The declaration prevails over inconsistent provisions in the bylaws or articles of incorporation, and statutes
 - There is no counterpart in the planned community chapter, but most of the statutes begin “unless the declaration [bylaws] provide otherwise. . .”

Declaration Amendments

Washington PUD's

- Washington Homeowners Act
 - Adoption and amendment of bylaws, rules and regulations is allowed
 - No statutory mandate allowing amendments to declarations. Must look to the declaration to determine powers of the Association and voting requirements for amending the declaration.

Declaration Amendments

Washington Condominiums

- Statutory minimum voting 67% required unless:
 - Alters size, interest or use of unit, then 90% approval required and 100% consent of affected units
- Every Amendment must be recorded

Declaration Amendments

Oregon PUD's

- Homeowner Associations (PUD's)
 - Amendment requires 75% or greater approval of total votes
 - Cannot limit special declarant rights without consent of declarant
 - Cannot change the boundary of any lot or any restrictions on use unless owners of affected lots unanimously consent
 - Cannot change method of determining liability for common expenses or method of determining voting rights of any lot unless owners of affected lots unanimously consent

Declaration Amendments

Oregon Condominiums

■ Condominiums

- To be effective, must be approved by Real Estate Commissioner and county assessor
- Must be approved by 75% of owners unless a greater percentage is required by the declaration
 - Can change a GCE to a LCE or change the boundary of an LCE with approval of 75% plus approval of the owners of all units to which the LCE appertains.
 - Can change an LCE or a portion thereof to a GCE with the approval of the owners of all units to which the LCE appertains and the BOD
- An amendment changing boundaries shall be approved by all owners

Bylaws

Washington

- These are required unless provided in other governing documents
 - Number, qualifications, powers, duties, terms of office, and manner of electing and removing the Board and officers
 - Procedure for election by the Board of the officers of the association
 - Identify powers the Board or officers may delegate
 - Which officers can prepare, execute, certify, and record amendments to the governing documents on behalf of the association
 - Method for amending the bylaws
 - Anything else the association deems necessary and appropriate and not inconsistent with governing documents

Bylaws

Oregon

- Initial Meeting
- Transitional Advisory Committee
- Turnover meeting
- Annual Meetings
- Board Election & Terms
- Board Meetings
- Budget
- Maintenance and Repair Programs
- Employment contracts
- Collection of common expenses
- Insurance Coverage
- Annual financial statements
- Methods for adopting rules & regulations
- Method for amending the bylaws

Bylaw Amendments

■ Oregon

- Amendment of bylaws cannot require greater than an affirmative majority of votes
- If bylaw duplicates a declaration element, an amendment must meet the declaration amendment requirements

■ Washington

- Look to bylaws for method of amendment

Rules & Enforcement

Oregon & Washington

- Association may adopt rules for the operation and use of the common property
- Bylaws set process
 - Must provide for notice and opportunity to be heard if the rules will terminate access/use of common property or impose fines for violations
 - Must adopt and mail any fine schedule to each owner prior to imposing fines

Rules & Enforcement cont'd.

- Failures to comply may be enforced by:
 - Fines
 - Termination of Access/Use of Common Property
- Generally fines will be treated as unpaid assessments
 - Allows for lien claim against owner
 - Can pursue as ordinary action for money judgment without waiving lien rights
- Alternative Dispute Resolution
 - Association must offer mediation before suing
 - Association may use a Permit as a means to selectively allow a technical violation

Adopting a Rule

Oregon & Washington

- Board Resolution
 - Bylaws may require member ratification vote or other process
- Owner Input
 - Committees are a good way to develop drafts
 - Consider new options, defuse contentious issues
- Contents of the Resolution
 - Reason for the rule
 - Source of authority
 - Process by which it was adopted
 - The rule
 - Effective date
- Issue Copy of New Rule to Owners

Questions?



BARKER · MARTIN

CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS

A Professional Services Corporation