

Are You **Smarter**  
Than a **1st** Year Board  
Member ?

With your host: **Marlyn Hawkins**  
of **Barker Martin, P.S.**

**Season Premier:**

**Saturday, Sept. 22, 8:30 a.m. PST**

Thanks to everyone for attending and participating in our game!

Neither the contestants nor the volunteer association managers were given the topics, questions or answers ahead of time. For those of you unfamiliar with the game show format upon which our game was based, the association managers were asked to share their experiences in relation to a particular question - not necessarily just answer the question correctly!

### DISCLAIMER

(Of course there's a disclaimer, we're attorneys!)

Answers to questions asked were taken from the statutes relating to HOAs and COAs. All questions pertained to condos (COAs) unless otherwise stated *and assumed that the governing documents did not provide otherwise*. As such, the "correct" responses represent the "default" rule, which are often varied by your governing documents (explaining the wide variety of responses from both our volunteer managers and contestants). Thus, answers to these questions, when applied to your COA or HOA will vary. Please contact counsel for the answers to these and any other questions relevant to your particular association.

# Answers & Citations

# Board Authority

- 1) True or False: Board Members elect Officers (president, vice president, etc.). **Answer:** True. See RCW 64.34.308(6)
- 2) Can a majority of the board remove another board member? **Answer:** No. See RCW 64.34.308(7). Notwithstanding governing documents, 2/3 vote of homeowners required.
- 3) What is the duty required of an *elected* board member. **Answer:** Duty of Ordinary and Reasonable Care. See RCW 64.34.308(1).
- 4) Can the Board of a Condominium revoke a member's right to vote for failure to pay assessments? **Answer:** No. Unit owners have a right to vote that is not contingent upon paying assessments. See RCW 64.34.020(32).
- 5) Can the Association sue for defects that cause leaky shower heads? **Answer:** Maybe. RCW 64.34.304(d) provides that an Association may sue on behalf of two or more unit owners on matters "affecting the condominium" Thus, if the leak affects common elements, the test is likely met, but if it only affects units, the Association's standing to bring the lawsuit is questionable.

# Budgets & Assessments

- 1) May a budget be passed when a quorum is not present at the budget ratification meeting? **Answer:** Yes. See RCW 64.34.308(3).
- 2) When must the budget ratification meeting occur? **Answer:** Between 14 and 60 days after summary is mailed. See RCW 64.34.308(3).
- 3) Can late charges and collection costs be charged to a homeowner as assessments? **Answer:** Yes. Late charges and collection costs are automatically part of the assessment. See RCW 64.34.020(3).
- 4) What happens if a budget is not ratified? **Answer:** The old budget continues until a new one is ratified. See RCW 64.34.308(3).
- 5) You were just elected treasurer of a newly built condominium. You notice that no assessments have been paid for 4 of the 20 units. Those units are unsold and unoccupied. Can you collect the assessments for those units? **Answer:** Yes. RCW 64.34.360(1) provides that once assessments are levied, all unit owners must pay, including the developer.

# Grab Bag

1) What do you call a portion of the common elements allocated for the exclusive use of one or more, but fewer than all, units?

**Answer:** A Limited Common Element. See RCW 64.34.020(LCE)

2) Does a homeowner in an HOA (as opposed to a COA) get any statutory warranties? **Answer:** No! Despite the virtually identical nature of such developments, condo owners have statutorily implied warranties under the Condo Act where single family homeowners have none.

3) Can the Declarant appoint a board member after transition of control. **Answer:** No.

4) Which of the following is NOT an implied warranty of quality under the Condo Act:

A) the condo is constructed according to the applicable building code

B) the condo is soundproof

C) the condo is suitable for the ordinary uses of real estate of this type

D) the condo is free from defective materials

**Answer:** B. See RCW 64.34.445.



# Grab Bag, Cont.

5) When was the Washington Condominium Act enacted?

**Answer:** July 1, 1990. Condominiums whose declarations are filed prior to this date are subject to the Horizontal Property Regimes Act at RCW 64.32.

# Amendments

- 1) When does a properly approved declaration amendment become effective? **Answer:** Upon recording with the county. See RCW 64.34.264(3).
- 2) In a residential condo, what minimum percentage homeowner vote is required to amend the declaration? **Answer:** A minimum of 67%, but can be more if the declaration so says. See RCW 64.34.264(1).
- 3) How long after it is recorded may the validity of an amendment be challenged? **Answer:** One year. See RCW 64.34.264(2).
- 4) What percentage of vote is required to change "the use to which a unit is restricted"? **Answer:** 90% + agreement of owner affected. See RCW 64.34.264(4).
- 5) True or False: In a condo, a declaration provision requiring 100% approval of the association to amend the declaration is void. **Answer:** Maybe. While the Condo Act provides that the declaration can require higher approvals, requiring 100% approval for most actions may prove too high a burden to allow the association to function and could be struck down by a court.

# Meetings, Voting & Notice

1) What percentage of votes at a meeting constitutes a quorum?

**Answer:** 25% unless your declaration provides otherwise. See RCW 64.34.336.

2) Which of the following events *need not be included in the meeting notice*:

A) Time and place

B) Items on agenda to be voted on

C) Officers reports

D) General nature of any proposed amendment

**Answer:** C. See RCW 64.34.332

3) At a special homeowners meeting to discuss landscaping, a motion is made to increase assessments to cover repaving and a vote taken. Is the vote proper? **Answer:** No. RCW 64.34.332 requires the notice of the meeting to include matters to be voted on. Since the paving vote was not in the notice, the vote is invalid.

# Meetings, Voting & Notice, Cont.

4) Who can call a homeowners meeting?

- A) President
- B) Majority of board
- C) Owners having 20%
- D) All of the above.

**Answer:** D. See RCW 64.34.332.

5) Does the developer/declarant get to vote on behalf of the units it has not yet sold? **Answer:** Yes. If the developer is the owner, it must be allowed to vote its units. See RCW 64.34.020(32), which specifically includes the declarant as a unit owner.