



BARKER MARTIN

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Governing Documents 101 & Amending Governing Documents

Presented By:

**Jeremy Stilwell & David Silver
Attorneys**

Barker Martin, P.S.

719 – 2nd Avenue, Suite 1200

Seattle, WA 98104-1749

206-381-9806

Bellingham 360-756-9806

www.barkermartin.com

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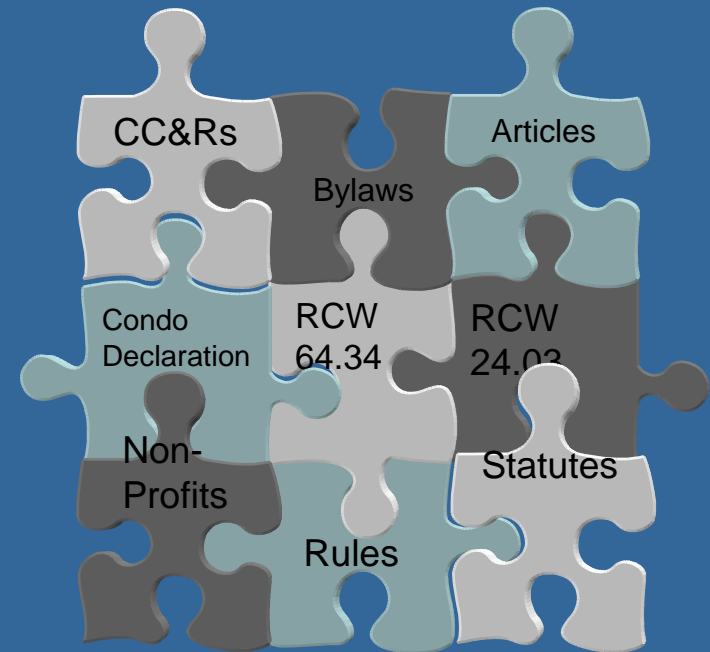
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Overview

- **Governing Documents:**
 - What are they, what are the differences between them, what is the “pecking order” of the governing documents, and why do we have to follow them
- **Amending Governing Documents:**
 - Declarations, CC&Rs, Bylaws & Rules and Regulations: how to change them



Governing Documents

- What are they?
 - Condominiums:
 - Condominium Declaration
 - Condominium Association Articles of Incorporation
 - Condominium Association Bylaws
 - Rules and Regulations
 - HOAs:
 - Covenants, Conditions & Restrictions
 - Homeowner Association Articles of Incorporation
 - Homeowner Association Bylaws
 - Rules and Regulations



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Condominiums – Creatures of Statute

- “Old” Horizontal Property Regimes Act (RCW 64.32) (1963)
- “New” Washington Condo Act (RCW 64.34) (July 1, 1990).
- Washington Nonprofit Corporation Act (RCW 24.03)
- When in conflict, condo statutes control over corporation acts (RCW 64.34.300)

Homeowners' Associations & CC&Rs

- Homeowners' Associations Act (RCW 64.38)
- Washington Nonprofit Corporation Act (RCW 24.03)
- HOA Act addresses very few association issues when compared to the Condo Act
- Real Property Covenants (CC&Rs)
 - A covenant is a written promise restricting an owner's use of his or her property for the benefit of other property.
 - HOA CC&Rs similarly burden and benefit each property in the HOA.
 - CC&Rs normally require an Association be created to administer certain functions, such as collection of assessments, budgeting, caring for common areas, etc.

Condominium Declarations

- Condo formed upon *RECORDING* of Declaration and Survey Map and Plans. (RCW 64.34.200)
- Why is *RECORDING* important?
 - Because it places purchasers on notice of Dec's contents
 - Generally, it takes away the "Well, I didn't read that boring document so I didn't know that I had to _____" excuse
- Must meet minimum statutory requirements (RCW 64.34.216)
 - Minimum requirements allow a fair amount of drafting freedom, which results in a variety of different condominium declarations in Washington
 - Defines Common Areas and Organization of Association, among other things
 - Allows for Amendments
 - When in conflict, Declaration trumps Bylaws, but is trumped by Condo Act.

Condo & HOA Articles of Incorporation

- Establishes the Association as a profit or nonprofit corporation as required by Condo Act RCW 64.34.300
- Very little information for governance – intended to be extremely broad
- RCW 24.03.025 states list of things it must contain:
 - Name, duration, purpose, definition and limitations of power, liability, number of directors, address, incorporator
- Task force considering change to allow other forms of ownership such as LLC

Bylaws

- Trumped by Declaration, but trumps statutes if declaration so provides
- Board Members and Officers: Number, qualifications, powers, duties, terms of office, and manner of electing and removing
- Delegation
- Authority of officers to prepare, execute and record amendments to governing docs (subject to Declaration)
- Amending Bylaws
- Catch-all: Anything else the association deems necessary and appropriate

Rules and Regulations

- Condos - Authorized by Condo Act as an Association power (RCW 64.34.304(a)) *UNLESS* declaration provides otherwise
- HOAs – Authorized by HOA Act as an Association power (RCW 64.38.020) *UNLESS* CC&Rs provide otherwise
- Rules and Regulations should supplement Declaration, CC&Rs and Bylaws
- Normally contain the day-to-day, detailed guidelines that promote good behavior, safety, and Association harmony
- Oftentimes, Declaration or CC&R provisions will state “...this section may be supplemented by rules adopted by the Board.”

Amending Governing Documents

- Why Amend?
 - Compliance with law
 - Surprisingly, some Declaration and CC&R provisions do not comply with the law in all respects
 - Utilize best practices
 - Not too surprisingly, many Declarations and CC&Rs do not contain Association-friendly or owner-friendly provisions
 - Updates due to changing needs of owners
 - Rental restrictions, litigation barriers, inflation, difficulty to amend, provisions that have, over time, proven to be lemons
 - Inartfully drafted provisions and unclear provisions
 - Unclear provisions create numerous problems, such as:
 - Disagreements between owners, and between Association and owners
 - Roadblocks to the Association operating smoothly

What to Amend

- Some questions to consider:
 - What do you want to accomplish?
 - In what document is the provision(s) currently located?
 - Where should it be located?
 - Are there any other provisions you should include to avoid having to try to pass another amendment in the future?

Amendments Generally

- Homeowners' Associations
 - Adoption and amendment of *bylaws, rules and regulations* is allowed (unless otherwise provided in the governing documents (RCW 64.38.020))
 - No statutory mandate allowing amendments to CC&Rs. Must look to the CC&Rs to determine powers of the Association and voting requirements
- Condominium Associations
 - Generally, consent of 67% of the votes in the Association necessary to amend, *UNLESS* a larger percentage is specified in the Declaration (RCW 64.34.264)
 - Amendments that alter number of units, unit boundaries, allocated interests, or uses to which units are restricted require 90% consent, *UNLESS* a larger percentage is specified in the Declaration

Declaration Amendments (COA)

- Statutory minimum voting percentage of 67% required, *unless* amendment alters size, interest or use of unit, then 90% approval required
 - No amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides. RCW 64.34.264(4)
- Every Declaration amendment must be recorded; take effect upon recording
- 1-year statute of limitations for challenges (RCW 64.34.264(2))

Bylaws Amendments

- Declaration might specify how Bylaws must be amended (50% of all owners? 50% of a quorum? At a meeting or by mail?)
- Consult Bylaws – Bylaws required to contain amendment provisions
- “The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws ...” “The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation” RCW 24.03.070.
- Common Bylaws amendments:
 - Notice of meetings (14-60, 10-60), records examination requirements, voting and proxy procedures, vote by mail provisions, committees, notice and opportunity to be heard provisions

Rules Amendments

- Consistent with above principles, i.e. Rules must not conflict with Declaration, CC&Rs, Bylaws or Articles
- Advise consulting Association members
- Normally adopted by Board Resolution
- Notice to all Owners prior to implementation of penalties
- Prior to imposing penalties or fines for violations, all Association members must be provided a copy of the rules, and a schedule of the fines.

Other Considerations

- Will it pass?
- Any irregular requirements in your Governing Documents?
- Declarant approval?
- Grandfather provisions?
- Prevent potential challenge – best practices

Association Meetings

- 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
 - 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
- Decl/Bylaws for COA
 - between 14 and 60 days for budget meeting
 - Between 10 and 60 for regular or special meeting
 - Time and place, items on the agenda and votes

Meeting Procedures

- 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)
- Board Meeting Quorum: 50% of voting members present at beginning of meeting (WCA)
- Proxies, Absentee Ballots, voting by mail - check the governing documents



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Q&A

THANK YOU

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