



BARKER MARTIN

October 21, 2008

Hot Topics for Associations

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

Disclaimer

This presentation is for general informational purposes only and should not be construed as legal advice or a legal opinion on specific facts or circumstances nor a solicitation of legal business.

You are urged to consult an experienced lawyer concerning your particular factual situation and any specific legal questions you may have.

No attorney-client relationship attaches as a result of any exchange of information.

Powers of the Association Generally

The following are some of those powers conferred by the WCA:

- 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.

Power of the Association cont'd.

- Litigation: institute, defend, intervene in litigation on behalf of 2 or more unit owners on matters affecting the condominium
- Contracts: make contracts and incur liabilities
- Maintenance & Repair: regulate the use, maintenance repair, replacement and modification of common elements
- 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

Powers of the Association Cont'd.

- 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
- Charges for amendments, resale certificates and statements of unpaid assessments (WCA)
- Indemnification of officers and board of directors and maintain D&O liability insurance (WCA)
- 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.*

Common Duties of the Association & Board Giving Rise to Liability

- Meetings
- Budgets
- Records & Financials
- Amendments
- Suspected Defects & Investigations
- Disclosures
- Reserve Studies



BARKER MARTIN

Board Meeting (HOA)

- Most meetings must be open to owners [RCW 64.38.035(2)] (Not addressed in Condo Act)
- Executive session meetings may be for purpose of:
 - Consultation with counsel
 - Considering communication with legal counsel
 - Personnel matters
 - Discussion of:
 - Possible violation of governing documents;
 - Possible owner liability to association; and
 - Discuss likely or pending litigation



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
 - By vote of 20% (10% for HOA) of owner voting interests
 - Notice must be *hand delivered or mailed* to the address of each owner and any other owner-designated address



BARKER MARTIN

Association Meetings

- Notice (HOA)
 - between 14 and 60 days
 - Time and place, items on the agenda and votes
- Notice (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)
 - 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 and Absentee Ballots – check the governing documents

Hot Topics

- NOTICES
 - Addresses
 - Developers
 - Renters
 - Annual Meeting
 - Directors Meeting
 - Committee Meeting
 - Proxies

Rules & Enforcement

- Trumped by Statutes, Declarations and Bylaws
- Overall Considerations for Rules
 - Reasonable, expected rules
- Recommendations:
 - Bylaws set enforcement process
 - Due Process
 - Notice to Owners – must adopt and mail fine schedule to each owner prior to imposing fines (RCW 34.34.304(k)).
- Failures to comply may be enforced by:
 - Fines
 - Check Declaration (liens, advance deposits, foreclosure)



Rules and Enforcement (cont'd)

- Fines should be treated as unpaid assessments
 - Allows for lien claim against owner property
 - Can pursue as ordinary action for money judgment w/o waiving lien rights
- Alternative Resolution
 - Association must offer mediation before suing
 - Association may use a 'Permit' / 'Variance' as a means to selectively allow a technical violation
 - Attorneys' Fees



BARKER MARTIN

Rules & Enforcement

- Overall Considerations for Rules
 - Reasonable, expected rules
- Recommendations:
 - Bylaws set enforcement process
 - Due Process
 - Notice to Owners - adopt and mail fine schedule to each owner prior to imposing fines
- Failures to comply may be enforced by:
 - Fines



Rules and Enforcement – cont'd

- Fines should be treated as unpaid assessments
 - Allows for lien claim against owner property
 - Can pursue as ordinary action for money judgment w/o waiving lien rights
- Alternative Resolution
 - Association must offer mediation before suing
 - Association may use a 'Permit' / 'Variance' as a means to selectively allow a technical violation
 - Attorneys' Fees



BARKER MARTIN

Hot Topics

- NOTICE
- WRITTEN PROCEDURES
 - Properly adopted and Published Bylaws and Rules
- TELEPHONIC HEARINGS
- USE OF COMMITTEES
- RESTRICTING USE/ACCESS FOR VIOLATIONS

Budgets

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

Records & Financials

- Manager or Association duty to keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its *financial* status
- Manager must return all original documents/records to Association upon termination or request of Board. Manager entitled to keep a copy of the records.
- All owners or their mortgagees (or authorized agents) entitled to inspection of records upon advance notice.
- No unlisted phone number of any owner can be released.
- Use caution releasing other personal information of members.

Records & Financials Cont'd.

- Association shall prepare annual financial statements.
 - COA: If 50 or more units, then CPA must annually audit.
 - An association can dispense with audits upon vote of 67% of votes cast by owners
- No commingling of Association's funds – funds must be kept in Association-named account.



BARKER MARTIN

HOT TOPICS

- RESTRICTIONS ON BUDGET INCREASES
- INVESTMENTS
- FDIC INSURANCE
- RESERVE STUDIES
- BORROWING FROM RESERVES

Defect Investigations

- New Association or Conversion
- Nearing statute of limitations
- Upon evidence of problems
 - Reserve Study Expert
 - Homeowner
 - Property Mgr
- Ostrich Syndrome

Warranty Claims

- KNOW YOUR RIGHTS
- DON'T BE FOOLED BY UNENFORCEABLE DISCLAIMERS
- HAVE A PLAN
- EDUCATE THE OWNERS
- FOLLOW THE PRESCRIBED PROCEDURES
 - RCW 64.50 Notice of Claim
 - Declaration or Bylaws may contain other requirements – *read these carefully*



BARKER MARTIN

Q&A

THANK YOU

**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