

# Washington State Chapter **COMMUNITY ASSOCIATIONS INSTITUTE**

*The professional organization providing  
education, resources, and advocacy  
for community association living.*



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# Things Change!

New Developments Affecting Declaration Amendments,  
Rental Restrictions, and FHA Certification

WSCAI Saturday Seminar  
November 8, 2014

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# Overview

- Recent Cases (*Chiwawa*; *Filmore*)
- Declaration Amendments (general)
- Declaration Amendments (rental restrictions)
- Nuts and Bolts of Amendments
- FHA Certification

# Chiwawa

- *Wilkinson v. Chiwawa Communities Ass'n*, 327 P.3d 614 (April 17, 2014);
- Washington State Supreme Court case;
- Involves % required to amend HOA declaration;
- Court differentiated “change” declaration from “creating new” covenants;
- Court focused on “general plan of the development” and “developer’s intent”.



# Result of *Chiwawa*

- Puts into question just about any HOA declaration amendment;
- How should HOAs proceed now?
- What about recently adopted amendments?
- Since supreme court opinion, cannot be appealed—perhaps legislature will take action next session.

# Filmore

- *Filmore LLLP v. Unit Owners Association of Centre Pointe Condominium*, 333 P.3d 498 (Sep 2, 2014);
- Court of Appeals' (Division 1) opinion;
- Involves % required to add rental cap to declaration;
- Court found leasing of units changed “use” of residential units, thus triggering 90% approval requirement under RCW 64.34.264(4).



## Result of *Filmore*

- The Association has filed petition for review by state supreme court—jury still out;
- Legislature also could step in;
- *Should* only apply to “New Act” condos;
- Question as to previously adopted amendments passed with <90% not addressed, but in question (see RCW 64.34.264(2)).

# Nuts and Bolts of Amendments

- Signatures on recordable documents
- Statute of limitations re challenges to amendments
  - “Void” versus “voidable”
- “How to” amend provisions
- Adding new covenants



# Guidance Today?

- General amendments
  - Condo or HOA? If condo, New Act or Old Act
- Amendments affecting rentals
  - Rental Caps
  - Other restrictions affecting leasing:
    - Tenant registration;
    - Rental intercept;
    - Lease review;
    - Move in-move out fees.



# FHA Certification for Condos

- Why?
  - Approximately 60% of new home buyers intend to use an FHA-backed loan
  - Increases pool of potential buyers
  - FHA loans may be assumed
- Misperceptions:
  - Will bring in “low income” buyers
  - Guidelines are too strict and costly
  - Only a small percentage of loans are FHA-backed

# FHA Certification (continued)

- Guidelines
  - No greater than 24% of the property's floor area can be used for non-residential/commercial purposes
    - Possible exceptions for multi-use developments
  - No more than 15% of the total units can be delinquent on assessments
  - Fidelity bond insurance required for projects with greater than 20 units

# FHA Certification (continued)

- At least 50% of the units must be owner-occupied
- No tenant screening of any type allowed

# FHA Certification

- Sources:
  - Mortgagee Letter 2014-17 (August 29, 2014)
  - Mortgagee Letter 2012-18 (September 13, 2012)
- Guidelines referenced above valid until August 31, 2016 (unless pre-empted by subsequent letter)

# FHA Certification (continued)

- List of required documents
- Checking your association's status: HUD website:

<https://entp.hud.gov/idapp/html/condlook.cfm>

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Questions??

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# CAI and the Washington State Chapter of CAI

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