

The Changing Landscape of Community Association Law
by Kevin L. Britt

Condominium and homeowners association boards use attorneys as swords, shields, and guides. The guide role is important because it educates boards about the sources of authority that authorize and restrain their actions. Unfortunately, the guide role is often utilized infrequently or not at all. Community association boards should recognize the value of the guide role and give their attorneys an opportunity to provide that service.

Boards generally consult with attorneys to enforce covenants and collect assessments. The attorneys are swords used to compel compliance. Boards occasionally consult with attorneys to respond to threatened or actual litigation by owners or others. The attorneys are shields used to minimize liability. Most boards understand the need to get attorneys involved in those situations. However, the need to seek legal advice is also present when boards are engaged in more routine aspects of their work.

Some boards consult with attorneys on a regular basis to ensure that they are acting in accordance with their governing documents and current state law. The attorneys are guides used to manage association affairs. One way that they perform this function is by reviewing and commenting on correspondence to owners and board initiatives. Another way attorneys guide boards is by providing them with periodic updates about new laws and judicial decisions that are relevant to them.

Three significant new laws affecting Washington condominium and homeowners associations were approved during the 2011 legislative session. These laws restrict the imposition of private transfer fee obligations, permit higher resale certificate preparation charges, and require various actions relating to reserve accounts and studies.

A new section restricting private transfer fee obligations (“PTFOs”) was added to Title 64 of the Revised Code of Washington on April 13, 2011.¹ A PTFO is a provision in a declaration or covenant that requires money to be paid to the association when a unit or lot is sold. The new law states that PTFOs recorded on or after April 13, 2011 are not binding or enforceable. It goes on to state that PTFOs recorded before April 13, 2011 are not presumed to be valid and that they will become unenforceable on December 31, 2011 unless the associations that benefit from them record documents containing certain notices before that date. Transfer-related assessments payable to community associations in accordance with the state laws that govern them (such as resale certificate preparation fees and priority liens for delinquent assessments) are exempt from this new law and can still be collected in connection with transfers of ownership.

The Washington Condominium Act began to permit condominium associations to charge up to \$275 to prepare resale certificates on July 22, 2011.² An association officer or agent will continue to be required to sign resale certificates in conjunction with proposed sales of units after making a series of disclosures (such as whether repair work is anticipated that will cost more than five percent of the annual budget) based on actual knowledge.³

Effective January 1, 2012, the Washington Condominium Act and Washington Homeowners’ Associations Act will contain a number of new provisions relating to reserve studies and accounts.⁴ Two of the changes affecting condominium associations are particularly significant. First, those associations

¹ SSB 5115, CH 36 (2011).

² SSB 5224, CH 48 (2011).

³ RCW 64.34.425.

⁴ ESHB 1309, CH 189 (2011).

will only be required to prepare and update reserve studies if this does not pose an unreasonable hardship and if the current total cost of major maintenance, repair, and replacement of reserve components is fifty percent or more of the gross budget of the association, excluding reserve account funds. Second, condominium associations will be required to make certain disclosures about reserve studies and accounts as part of the budget summaries that they provide to owners.

Washington homeowners associations are also required to prepare and update reserve studies and make disclosures about reserve studies and accounts as part of budget summaries under the third new law.⁵ However, such associations are exempt from those requirements if: 1) the cost of the reserve study exceeds five percent of the association's annual budget, 2) the current replacement value of the major reserve components is less than seventy-five percent of the gross budget of the association, excluding reserve account funds, or 3) there are ten or fewer homes in the association.

The statutes governing Washington condominium and homeowners associations are subject to revision during any legislative session. Attorneys who focus on representing community associations are likely to be among the first to know about changes to those statutes. Boards should take advantage of those attorneys' knowledge and experience to stay informed about their legal obligations and to avoid acting in ways that are inconsistent with those obligations. If your board feels lost in the wilderness, establishing a relationship with an attorney that is comfortable in the guide role and viewing that person as an educational resource is an excellent way to address that problem.

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⁵ Id.