

## Proposed amendment to adopt RCW 64.90:

This [third] amendment to the Restated Declaration of Covenants, Conditions, and Restrictions of The Villages of Garrison Creek adopts that The Villages of Garrison Creek shall be governed by the Washington Uniform Common Interest Ownership Act ("WUCIOA") identified as RCW 64.90.

This shall become effective when legally formatted and recorded provided 30% of the owners vote and 67% of votes approve at the 2023 annual meeting.

## Consequences for Adopting WUCIOA (RCW 64.90)? *(extracted from CondLaw's 2019 Handbook)*

- 1) More definitions - 64.90.010
- 2) Prohibits challenge to Declaration Amendments after one year - 64.90.285
- 3) Eliminates 90% approval for restrictions on use (rental caps)- 64.90.285
- 4) Allows corrective Amendments by Board - 64.90.285
- 5) Specifies all powers and duties - 64.90.405
  - a) Allows all Associations to assign future income to allow borrowing
  - b) Allows enforcement against tenants
  - c) Clarifies Board discretion in enforcement
- 6) Sets more requirements for Bylaws - 64.90.610
- 7) Provides authority to inspect Units - 64.90.440
- 8) Specifies ability to have executive sessions of Board Meetings - 64.90.445
- 9) Challenges to Board Meeting process must be done within 90 days - 64.90.445
- 10) Allows voting by Written ballot, and up to 11 months to collect them - 64.90.455
- 11) Allows costs due to Misconduct to be assessed directly to units - 64.90.480
- 12) Provides super-priority lien for all communities - 64.90.485
- 13) Provides for some attorney fees if banks don't pay super- priority lien - 64.90.485
- 14) Provides 6 years for the Association to pursue unpaid Assessments - 64.90.485
- 15) Allows non-judicial foreclosure to be included in the Declaration - 64.90.485
- 16) Defines what Records are and the rules for retaining them - 64.90.010 and 64.90.475
- 17) States specifically what Records can be withheld from owners - 64.90.495
- 18) Allows rules to limit rentals, but only to meet bank standards - 64.90.510
- 19) Allows notice by Electronic Transmission - 64.90.515
- 20) Says failure to give notice does not invalidate meeting actions - 64.90.445
- 21) Allows the Board to remove a delinquent Board Member - 64.90.520
- 22) Prohibits suspension of delinquent Owner voting rights - 64.90.405
- 23) Requires ratification of any loan, similar to ratifying a Budget - 64.90.405
- 24) Requires both Board and committee Meetings be open - 64.90.445
- 25) Requires notice of Board and committee Meetings to Owners - 64.90.445
- 26) Requires reasonable Owner comment period at Board and Owner Meetings 64.90.445
- 27) Specifies Board Meetings must be at or near the community - 64.90.445
- 28) Requires materials distributed for Board Meetings be available to Owners - 64.90.445
- 29) Limits Board decisions by Written consent to "ministerial" actions - 64.90.445
- 30) Sets standards for voting by mail - 64.90.455
- 31) Defines Misconduct to mean "Gross Negligence" when causing expenses to the Association- 64.90.480
- 32) Defines what Records are and the rules for retaining them - 64.90.010 and 64.90.475
- 33) Requires rules be published to Owners before Board adopts - 64.90.505
- 34) Requires CPA audit annually unless Budget is under \$50,000 - 64.90.530
- 35) Requires notice to Owners of reserve fund use not for common repair - 64.90.540
- 36) Requires Resale Certificates for all communities - 64.90.640

## How Does a Community Adopt WUCIOA (RCW 64.90)? *(extracted from CondLaw's 2019 Handbook)*

For currently existing HOAs, there is a process to adopt the Washington Uniform Common Interest Ownership Act ("WUCIOA"). First the Owners must vote to amend the Declaration and choose to be governed by WUCIOA. Second, the Board must vote to amend the Declaration to remove provisions which directly conflict with WUCIOA. Finally, the Owners can vote to adopt optional WUCIOA provisions, and delete or change non-conflicting provisions in the Declaration.

1. Switch the communities Governing Statute to WUCIOA. As outlined in RCW 64.90.095, to make this change:
  - a) The Board must prepare an Amendment to the Declaration and send it to all the Owners. This is a short document.
  - b) The Board must wait 30 or more days then hold an Association meeting on the Amendment.
  - c) Next, the Board must set a deadline for the Owners to complete voting and send the Owners the final proposed Amendment with a ballot for their vote.
  - d) The Amendment will pass if at least 30% of the Owners vote and 67% of votes approve.
  - e) The Amendment is effective when recorded.
  
2. Bring the Declaration in line with the provisions of WUCIOA as instructed by RCW 64.90.285(11)(d). To do so the Board must:
  - a) Draft a Declaration Amendment to delete and replace provisions which conflict with WUCIOA.
  - b) Send the Amendment to the Owners along with notice that in 30 or more days an Association meeting will be held.
  - c) The Owners must have an opportunity to comment on the Amendment at this meeting.
  - d) The Amendment may then be approved by two-thirds of the Board, at or after the meeting.
  - e) The Amendment is effective when recorded.
  
3. Adopt the optional WUCIOA provisions and remove old Declaration provisions not in conflict with WUCIOA. This step is not mandatory but allows the Association to:
  - a) Remove Declarant rights, and Declarant control references;
  - b) Consolidate governance issues in the Bylaws;
  - c) Allocate expenses against the Units which benefit from those expenses, including expenses to maintain Limited Common Elements;
  - d) Assess the HOA insurance deductible to **Unit** Owners; and
  - e) Assess expenses to a Unit for their or their guest's ordinary negligence.

To make these changes, the Association must amend the Declaration by following the steps in the statute. These changes will be effective when recorded.

## Extracts of applicable laws 64.38 to 64.90 requirements:

### RCW 64.38.095 Application to common interest communities.

(1) This chapter does not apply to common interest communities as defined in RCW 64.90.010:

(a) Created on or after July 1, 2018; or

(b) That have amended their governing documents to provide that chapter 64.90 RCW will apply to the common interest community pursuant to RCW 64.90.095.

(2) Pursuant to RCW 64.90.080, the following provisions of chapter 64.90 RCW apply, and any inconsistent provisions of this chapter do not apply, to a common interest community created before July 1, 2018:

(a) RCW 64.90.095;

(b) RCW 64.90.405(1) (b) and (c);

(c) RCW 64.90.525; and

(d) RCW 64.90.545.

### RCW 64.90.095 Election of preexisting common interest communities.

(1) The declaration of any common interest community created before July 1, 2018, may be amended to provide that this chapter will apply to the common interest community, regardless of what applicable law provided before chapter 277, Laws of 2018 was adopted.

(2) Except as provided otherwise in subsection (3) of this section or in RCW 64.90.285 (9), (10), or (11), an amendment to the governing documents authorized under this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments and in conformity with the amendment procedures of this chapter. If the governing documents do not contain provisions authorizing amendment, the amendment procedures of this chapter apply. If an amendment grants to a person a right, power, or privilege permitted under this chapter, any correlative obligation, liability, or restriction in this chapter also applies to the person.

(3) Notwithstanding any provision in the governing documents of a common interest community that govern the procedures and requirements for amending the governing documents, an amendment under subsection (1) of this section may be made as follows:

(a) The board shall propose such amendment to the owners if the board deems it appropriate or if owners holding twenty percent or more of the votes in the association request such an amendment in writing to the board;

(b) Upon satisfaction of the foregoing requirements, the board shall prepare a proposed amendment and shall provide the owners with a notice in a record containing the proposed amendment and at least thirty days' advance notice of a meeting to discuss the proposed amendment;

(c) Following such meeting, the board shall provide the owners with a notice in a record containing the proposed amendment and a ballot to approve or reject the amendment;

(d) The amendment shall be deemed approved if owners holding at least thirty percent of the votes in the association participate in the voting process, and at least sixty-seven percent of the votes cast by participating owners are in favor of the proposed amendment.

### RCW 64.90.405 Powers and duties.

(1) An association must:

(a) Adopt organizational documents;

(b) Adopt budgets as provided in RCW 64.90.525;

(c) Impose assessments for common expenses and specially allocated expenses on the unit owners as provided in RCW 64.90.080(1) and 64.90.525;

### RCW 64.90.080 Common interest communities, preexisting.

(1) Except for a nonresidential common interest community described in RCW 64.90.100, RCW 64.90.095, 64.90.405(1) (b) and (c), 64.90.525 and 64.90.545 apply, and any inconsistent provisions of chapter 58.19, 64.32, 64.34, or 64.38 RCW do not apply, to a common interest community created in this state before July 1, 2018.

(2) Except to the extent provided in this subsection, the sections listed in subsection (1) of this section apply only to events and circumstances occurring on or after July 1, 2018, and do not invalidate existing provisions of the governing

documents of those common interest communities. To protect the public interest, RCW [64.90.095](#) and [64.90.525](#) supersede existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter [64.38](#) RCW.

**RCW [64.90.525](#) Budget—Assessments—Special assessments.**

(1)(a) Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. Unless at that meeting the unit owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget and the assessments against the units included in the budget are ratified, whether or not a quorum is present.

(b) If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget proposed by the board.

(2) The budget must include:

(a) The projected income to the association by category;

(b) The projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category;

(c) The amount of the assessments per unit and the date the assessments are due;

(d) The current amount of regular assessments budgeted for contribution to the reserve account;

(e) A statement of whether the association has a reserve study that meets the requirements of

RCW [64.90.550](#) and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and

(f) The current deficiency or surplus in reserve funding expressed on a per unit basis.

(3) The board, at any time, may propose a special assessment. The assessment is effective only if the board follows the procedures for ratification of a budget described in subsection (1) of this section and the unit owners do not reject the proposed assessment. The board may provide that the special assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.

**RCW [64.90.545](#) Reserve study.**

(1) Unless exempt under subsection (2) of this section, an association must prepare and update a reserve study in accordance with this chapter. An initial reserve study must be prepared by a reserve study professional and based upon either a reserve study professional's visual site inspection of completed improvements or a review of plans and specifications of or for unbuilt improvements, or both when construction of some but not all of the improvements is complete. An updated reserve study must be prepared annually. An updated reserve study must be prepared at least every third year by a reserve study professional and based upon a visual site inspection conducted by the reserve study professional.

(2) Unless the governing documents require otherwise, subsection (1) of this section does not apply (a) to common interest communities containing units that are restricted in the declaration to nonresidential use, (b) to common interest communities that have only nominal reserve costs, or (c) when the cost of the reserve study or update exceeds ten percent of the association's annual budget.

(3) The governing documents may impose greater requirements on the board.