

MAP AND SURVEY GUIDELINES
UNDER WUCIOA (CH. 64.90 RCW)
WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT
FOR CONDOMINIUMS, COOPERATIVES, PLAT COMMUNITIES AND
MISCELLANEOUS COMMUNITIES
(REVISED 6/11/2021)
SEE SEPARATE GENERAL GUIDELINES FOR WUCIOA COMMON
INTEREST COMMUNITIES*

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THE AUTHOR WISHES TO RECOGNIZE AND THANK BRUCE TOWLE, PLS, AND HUGH LEWIS, ESQ., FOR THEIR REVIEW OF AND CONTRIBUTIONS TO THIS MATERIAL.

[Ch. 64.90 RCW](#) – Chapter 277, Laws of 2018; Amended Chapter 238, Laws of 2019

Refer also to separate checklists applicable to each type of WUCIOA Common Interest Community.

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*Not yet prepared as of this writing

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MAP and SURVEY PREPARATION GUIDELINES (WUCIOA)

IMPORTANT NOTES:

*These guidelines apply to **condominiums**, **cooperatives** and **miscellaneous communities** and **plat communities** created by the simultaneous recording of a **declaration** and **map** on or after July 1, 2018, pursuant to the Washington Uniform Common Interest Ownership Act (WUCIOA), RCW 64.90 et seq. (Ch. 277, Laws of 2018).*

Refer to separate guidelines for CICs relating to non-map/survey issues under WUCIOA.

In addition, checklists for each type of CIC should be utilized for individual projects.

*Condominiums created **on or after** July 1, 1990, (including “phased” projects for which later phases are recorded after July 1, 2018) will continue to be governed by the Washington Condominium Act (WCA), RCW 64.34 et seq., except to the extent the governing documents have been amended to incorporate provisions of WUCIOA.*

*Condominiums created **before** July 1, 1990, (including “phased” projects for which later phases are recorded after July 1, 1990) will continue to be governed by the Horizontal Property Regimes Act (HPR), RCW 64.32 et seq., except to the extent the governing documents have been amended to incorporate provisions of WCA or WUCIOA.*

***Plats** and similar subdivisions, while defined and affected by WUCIOA, continue to be covered by Ch. 58.17 RCW and local ordinances adopted pursuant thereto, for survey requirements. This material does not address survey platting requirements for subdivisions covered by that statute but **DOES** address additional map requirements imposed by WUCIOA.*

***Cooperatives** and **miscellaneous communities** as defined by WUCIOA were not subject to statutory survey provisions prior to July 1, 2018.*

Guidelines prepared for WCA in 1990 by the Washington Land Title Association still apply to the survey map and plans for condominiums prepared under that statute. This material discusses some requirements imposed by WCA but does not replace those guidelines.

1.0 INTRODUCTION

Ch. 64.90 RCW (Ch. 277, Laws of 2018, amended Ch. 238, Laws of 2019) known as the Washington Uniform Common Interest Ownership Act, or WUCIOA^a) was adopted with an effective date of July 1, 2018. The amendment was effective July 28, 2019. With respect to the subdivision of land, it defines four types of “**common interest communities**” (CICs): *condominium, cooperative, plat community* and *miscellaneous community*.^b Most land subdivisions, but not all, created in Washington State after July 1, 2018, will fall into one of these CIC categories.

^a WUCIOA is based on the Uniform Common Ownership Interest Act drafted by the Uniform Law Commission (<https://www.uniformlaws.org/home>), but with significant changes.

^b See “Definitions” in §2.0 on page 9



The creation of a CIC requires the concurrent¹ recording of two *governing documents*: a *declaration* and a *map*^a of the land and units created by the declaration.^b Note that, while unlikely, these components could be combined into one document (typically a map, with the declaration elements incorporated on the face of the map).

The declaration, not the map, creates the CIC.² Note, however, that an amended declaration for a plat community must not be inconsistent with the approved and recorded plat and any prior approved and recorded amendment to the plat.³

The map is recorded as a single separate document. It is not attached as an exhibit to the declaration. However, for plats, WUCIOA permits certain elements of WUCIOA map requirements (but not the plat itself) to be made part of or attached to the declaration.⁴ Even so, for purposes of WUCIOA, the map is always construed as part of the declaration.⁵

Only a licensed surveyor can prepare and certify the map for a CIC when it is a survey.⁶ When it is not a survey (this is optional for cooperatives only^c), the same map information is required, but must be certified by the declarant.⁷ The declarant must also execute the map and include a specific statement called a “*declaration*”.⁸

This declarant’s statement on the map is not to be confused with the written declaration document. The latter is the equivalent of “covenants, conditions and restrictions” (CCRs) type of document that are historically common to plats^d and similar subdivisions created pursuant to statute.⁹ Of course, CCRs can apply to any parcel or parcels, whether or not formally subdivided. Thus, WUCIOA can apply to miscellaneous communities.^e

TITLE COMMENT

The surveyor’s work must be coordinated closely with the title insurance company and the developer’s attorney when reviewing the requirements relating to the map.

Most new projects will include a *public offering statement* (POS^f), and the title company and surveyor should review that document as well. All three documents should be consistent.

The map must conform to the technical requirements (style, size, form and quality of the map) prescribed by the county recorder’s office,¹⁰ and if it is a survey, it must also comply with the requirements of the Survey Recording Act.¹¹

^a Note that under the prior WCA there were two components for a condominium map – a survey map (for the project) and a set of plans (for units). A surveyor could do both (and typically did so), but the set of plans showing the units could be done by an architect or engineer. This is changed under WUCIOA – a survey, prepared and certified by a surveyor, is required for all CICs (except in some cases, a cooperative).

^b See the definitions in “Declaration” in §2.2 on page 10 and “Map” in §2.3 on page 10.

^c See “Cooperative” in §2.6 on page 13.

^d See “Plat and Plat Community” in §2.7 on page 14.

^e See “Miscellaneous Community” in §2.8 on page 15 and “Miscellaneous Communities” in §7.0 on page 38 for additional discussions relating to that type of CIC.

^f See “Public Offering Statement” in §2.15 on page 20



TITLE COMMENT

In addition to these guidelines and the separate WUCIOA Map & Survey Guidelines, the surveyor, developer, developer's attorney and title company should also refer to the appropriate checklist used by the title company for the type of CIC to determine insurability of units for the type of CIC being created. It is important to note that such checklists do NOT include all WUCIOA requirements applicable to CICs.

2.0 DEFINITIONS

Some definitions will be of use to the surveyor. Most commentary below focuses on WUCIOA.

2.1 COMMON INTEREST COMMUNITY

The definition of a *common interest community* ("CIC") is:

"Common Interest Community" means real estate described in a declaration with respect to which **a person, by virtue of** the person's **ownership of a unit, is obligated to pay for a share** of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses **related to, common elements, other units, or other real estate** described in the declaration."¹²

TITLE COMMENT

The definition is not based on (1) the physical nature or appearance of a CIC, (2) the type of unit, nor (3) whether there are common elements.

All *condominiums* and *cooperatives* are CICs.

Not all plats are CICs. However, a plat where lot owners must share expenses would be a *plat community*.

A subdivision that is not a condominium, cooperative or plat community is a miscellaneous community (assuming it has a declaration or other document, including a survey or map, that includes provisions qualifying it as a CIC).

There are some exceptions^a to this definition, applicable to plat communities and miscellaneous communities.¹³ In addition to certain limited types of agreements^b, principal exemptions apply to (1) non-residential use and (2) the number of lots.^c Thus, **some** plat communities and miscellaneous communities would be exempt from **parts** of WUCIOA, although the developer can elect to apply WUCIOA in its entirety.^d

^a See "Exemptions to WUCIOA" in §9.0 on page 44

^b See "Voluntary Easements & Covenants" in §9.1 on page 44, including "An easement or covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community". RCW 64.90.115.

^c See "Small Projects" in §9.2 on page 44 and "Non-Residential – Other CICs" in §9.4 on page 45

^d See "Exemptions to WUCIOA" in §9.0 on page 44.



2.2 DECLARATION

Under WUCIOA, a *declaration* is the instrument, *however denominated*, that creates a common interest community, including any amendments to the instrument.¹⁴ Note that the map does not create the CIC, but is ancillary.¹⁵

The WCA and HPR definitions of “declaration” are similar, albeit relating only to condominiums under those statutes.¹⁶

Note that for a plat community the information required in a declaration by WUCIOA would be in the typical “covenants, conditions and restrictions” (generally referred to as CCRs) that are common to plats. Such CCRs would still a declaration under WUCIOA.

Not all plats, including short plats, necessarily have separate CCR documents. The qualifying information required of a declaration under WUCIOA could be on the face of the plat or even in deeds as lots are sold.

TITLE COMMENTS

COMMENT 1: A plat community might use a document entitled “Covenants, Conditions, Restrictions and Easements” or something similar. It would be equivalent to a declaration as defined in WUCIOA and need not be titled “declaration.” Some references in this material are “declaration/CCRs” in context of plats, but there is no requirement that the WUCIOA declaration document have a particular title.¹⁷

COMMENT 2: The concept of “general plan covenants” or “general plan restrictions” can be imposed on multiple lots by including the provisions in each deed as the lots are sold. (That is, there is no separate CCR document.) While not common, if deed covenants are encountered that ***relate to payment of common expenses applicable to multiple lots***, the matter should be referred to the title company underwriting.

2.3 MAP

WUCIOA uses the terms “map” and “survey” the distinction between which is discussed elsewhere in this material.^a

Under WUCIOA, the *map*¹⁸ is the drawing (for most CICs it must be a survey^b) that, among other things, delineates and describes the boundaries^c of the following elements of the CIC:

1. the land,
2. units,

^a See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31

^b A survey is optional for a cooperative map, but the map must include a declarant’s declaration addressing the same requirements included on a survey. RCW 64.90.245(6)(b). See “Optional Cooperative or Miscellaneous Community Certificate” in §17.7.3 on page 74 and the form of certificate on attached SCHEDULE E.

^c See “Unit Boundaries” in §12.0 on page 49 for discussion of unit boundaries and “Boundaries” in §17.8.3 on page 76



3. land that is subject to development rights,^a
4. certain other improvements, and
5. easements encumbering and appurtenant to the land.

If provided for in the declaration, it will include a description and delineation of future “phase” land that can be added later pursuant to a reserved development right.^b

For a plat community, information required by WUCIOA can be incorporated into the declaration, rather than being shown in the face of the plat survey that is prepared pursuant to Ch. 58.17 RCW and local ordinances adopted pursuant thereto. However, it must still be prepared and certified^c by a surveyor.¹⁹

A map, whether or not it is a survey, does not “create” a CIC but rather is ancillary to the declaration.²⁰

TITLE COMMENT

The data in the declaration and map must be consistent. Any inconsistencies or ambiguities between the declaration and the map should be referred to title company underwriting.

The WUCIOA map includes a *certification* by the surveyor (unless it is not a survey^d in which case the declarant will provide that certification^e) and a *declaration* by the declarant.^f

The map must be a survey^g for all CICs, with two possible exceptions: the map for a cooperative need not be a survey if it includes the required data and a specific certification by the declarant,²¹ and a miscellaneous community^h might not require a survey.ⁱ

^a See the definition in “Development Rights” in §2.12 on page 19 and see “Development Rights” in §16.0 on page 63 for a discussion of development rights

^b See the definition of “Development Rights” in §2.12 on page 19 and further discussion of development rights in “Development Rights” in §16.0 on page 63

^c See “Required Certificates and Declaration” in §17.7 on page 72 and the checklist in SCHEDULE G **SCHEDULE G.**

^d See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31

^e See “Required Certificates and Declaration” in §17.7 on page 72

^f See “Required Certificates and Declaration” in §17.7 on page 72

^g See the definition of “Survey” in §2.4 on page 12, and see “” in § for a discussion of the disti

^h See the definition of “Miscellaneous Community” in §2.8 on page 15, and “Miscellaneous Communities” in §7.0 on page 38

ⁱ See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31 for a discussion of the distinction between a map and a survey under WUCIOA, and see “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31 for a discussion of use of a map instead of a survey with a miscellaneous community



TITLE COMMENT

Any request to insure a miscellaneous community without a survey should be referred to title company underwriting.

Note that the concept of “as built” certifications for condominiums under both HPR and WCA²² is similar under WUCIOA, although the language is different.

2.4 SURVEY

As noted, WUCIOA uses the terms “map” and “survey” the distinction between which is discussed elsewhere in this material.^a

A survey²³ is required for CICs, except that a map for a cooperative^b need not be a survey if the declaration includes all information required on a survey, and the declarant provides a specific certification²⁴ and in some circumstances a miscellaneous community^c might not use a survey.

TITLE COMMENT

Title insurers generally will require a survey for a miscellaneous community. Any request to insure a miscellaneous community without a survey should be referred to title company underwriting.

As to a plat community, the declarant, declarant’s attorney and surveyor can elect to show some of the WUCIOA required information on a WUCIOA-compliant map attached to the declaration (so that the plat survey would look, at recording, much like a pre-WUCIOA plat), but it must still be prepared and certified by a surveyor.²⁵ This may be impractical for a document with letter or legal size pages as might be required by local recording offices.^d

2.5 CONDOMINIUM

A *condominium* is a statutory form of land division (separate ownership, along with taxation and financeability, of separate portions), and the term refers to the entire project (not an individual unit). In a condominium (1) there are common elements (which is all of the property outside the boundaries of the units²⁶), and (2) those common elements are owned by the unit owners as tenants in common.²⁷ All condominiums are CICs.

Note that a condominium must have common elements.²⁸

TITLE COMMENT

If a CIC purports to be a condominium but does not have common elements, or if the declaration provides for a different form of ownership of the common elements (such

^a See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31

^b See “Cooperative” in §2.6 on page 13

^c See “Miscellaneous Community” in §2.8 on page 15 and “Miscellaneous Communities” in §7.0 on page 38

^d See “Local Recording Requirements” in §17.2 on page 69



as being vested in the owners association) the title company should consult with underwriting.

The common elements of a condominium cannot be partitioned²⁹ or otherwise owned or encumbered by a unit owner, the owners association or any third party independent of an interest in a unit.^a (However, there are provisions for conveying or encumbering portions of the common elements by the owners association.³⁰)

TITLE COMMENT

Thus, any attempt to separately convey or encumber the common elements in a condominium should be reviewed by title company underwriting before insuring title to either the purportedly conveyed or encumbered land or any individual unit.

See, in general, “Post-WUCIOA Phases Added to Pre-WUCIOA Projects” in §8.0 below on page 40, and also “Condominium” in §8.1 below on page 41 for a discussion of post-WUCIOA additions to pre-WUCIOA condominiums.

2.6 COOPERATIVE

A *cooperative* is a statutory form of real property ownership (at least in context of exclusive possessory interests in portions of the land), but unless the declaration states that the interest of the unit owner is real property for all purposes, it is personal property.³¹ This may affect title insurability. All cooperatives created after July 1, 2018 (and those created prior to that date if the declaration is amended to incorporate provisions of WUCIOA), are CICs.

In a cooperative all of the real estate (including the units) is owned by an association, each member of which is entitled, by virtue of (a) the member’s ownership interest in the association and (b) a proprietary lease, to exclusive possession of a unit.³² It is not possible to separately own, convey or encumber an interest in the property of the cooperative^b independent of the possessory interest of the unit owner in a unit.³³ Thus, any attempt to convey or encumber the common elements in a cooperative must be reviewed by title company underwriting before insuring title to any individual unit.

All of the property outside the unit boundaries is common elements, but not a separate “parcel” vested in the unit owners; rather it is part of the entirety of the property, title to which is vested in the owners association.³⁴

WUCIOA requires a map for a cooperative, and the map can, but need not, be a survey.³⁵ However, if it is not a survey, the same map data and certification (by the declarant instead of the surveyor) are still required. The map would define the boundaries of the units, which would in most situations create a “good and sufficient” legal description for title insurance purposes.^c

^a “...any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.” (see cite in endnote)

^b “In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.” (cite in endnote)

^c See also “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31



2.7 PLAT AND PLAT COMMUNITY

A plat (including short plats and binding site plans³⁶; and see “Binding Site Plan” in §2.17 below on page 21), is a traditional form of statutory land subdivision:

1. in which units (lots or tracts) have been created by subdivision or short subdivision as both are defined in RCW 58.17.020, and
2. in which the boundaries of units are established pursuant to Ch. 58.17 RCW.

A *plat community* is a plat that meets the foregoing criteria, but is also a CIC because it has the elements of shared expenses relating to other land (land other than the unit owner’s lot) as included in the definition³⁷ of CIC.^a

Thus, if a plat does not have this CIC characteristic, it is not a plat community.^b

TITLE COMMENT

A plat community (a plat that is also a CIC) is a new concept in Washington under WUCIOA.^c

WUCIOA requirements for maps relating to plat communities generally involve notice and disclosure information but do not affect the existing statutory and regulatory requirements for the recorded plat community survey that creates the subdivision of land (pursuant to Ch. 58.17 RCW).

TITLE COMMENT

The applicability of the definition^d of a CIC to a plat would determine whether the plat is a plat community as defined by WUCIOA, and thus whether the provisions of WUCIOA would apply.^e

A plat community may or may not have common elements (which typically would be one or more separately surveyed and identified tracts or parcels of land, such as private roads, parks, tracts with community buildings or recreational features, greenbelts, drainage areas, etc.). But if it does, there might not be any obligation for lot owners to share costs related to common elements. If that is the case, it would not be a plat community.

Common elements in a plat community can be either conveyed to the owners association or owned by the lot owners as tenants in common.³⁸

^a See “Common Interest Community” in §2.1 on page 9

^b See also “Plats and Plat Communities” in §6.0 on page 37, and “Exemptions to WUCIOA” in §9.0 on page 44.

^c For additional discussion, see “Plats and Plat Communities” in §6.0 on page 37.

^d See the definition of CIC in “Common Interest Community” in §2.1 on page 9.

^e See “Plats and Plat Communities” in §6.0 on page 37 for further discussion of this issue. See also, in general, “Post-WUCIOA Phases Added to Pre-WUCIOA Projects” in §8.0 on page 40, and also see in particular “Plat Divisions recorded Before and after July 1, 2018” in §8.3 on page 42 for a discussion of post-WUCIOA additions to pre-WUCIOA plats.



This latter is often accomplished by dedication language on the face of the plat, but could be stated in the declaration (CCRs). It also generally is not intended to be accomplished by a separate deed to all of the lot owners, and there might or might not be an express inclusion of the respective undivided interest in the initial conveyance to each lot owner.

A plat community could involve vertically “stacked” lots,^a but such a CIC might also be accomplished with a miscellaneous community.^b

TITLE COMMENTS

1. The fact that the unit owners could own the common elements as tenants in common, which is also a defining characteristic of a condominium, does not necessarily create a conflict with WUCIOA’s definition of a condominium,^c because the plat community will have been created and recorded as a plat pursuant to Ch. 58.17 RCW, and that type of ownership is contemplated by the definition of plat community.

2: A plat community that (a) is not subject to any development rights, AND (b) contains no more than twelve units, AND (c) provides in the declaration that average annual assessments for residential units are less than \$300 (to be adjusted for inflation) is only subject to three WUCIOA sections^d (although the declaration can provide³⁹ that all of WUCIOA applies).^e

2.8 MISCELLANEOUS COMMUNITY

A *miscellaneous community* is any CIC that is not a plat community, condominium or cooperative. However, with respect to the subdivision of land, the creation of a miscellaneous community cannot be in violation of Ch. 58.17 RCW,⁴⁰ which in general means that it cannot be inconsistent with the exemptions to platting found in RCW 58.17.040. As is the case with plats, not all exempt divisions of land are CICs; it requires the existence of a declaration (or any similar document, including a map, containing the relevant language) characterizing the land division as a miscellaneous community to make it a CIC.^f

TITLE COMMENT

A miscellaneous community is a new concept in Washington under WUCIOA.⁹

^a See “Subdivision Compliance” in §4.2 on page 23

^b See “Miscellaneous Community” in §2.8 on page 15

^c “Condominium” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. RCW 64.90.010(11).

^d RCW 64.90.020 (separate titles and taxation), RCW 64.90.025 (applicability of local ordinances, regulations, and building codes) & RCW 64.90.030 (eminent domain).

^e See also “Small Projects” in §9.2 on page 44

^f See the definition of CIC in “Common Interest Community” in §2.1 on page 9.

^g For additional discussion, see “Miscellaneous Communities” in §7.0 on page 38.



A miscellaneous community may or may not have common elements, but, if it does, those common elements can be conveyed to the owners association or owned by the unit/lot owners as tenants in common.⁴¹ Note however, the latter element would also be a defining characteristic of a condominium.⁴² If a CIC purports to be a miscellaneous community, but (1) has common elements that are (2) owned by the unit owners as tenants in common, title insurance underwriting should be consulted.

TITLE COMMENTS

TITLE COMMENT 1: The fact that the unit owners could own the common elements as tenants in common, which is also a defining characteristic of a condominium, does not necessarily create a conflict with WUCIOA's definition of a condominium,^a because the miscellaneous community will have been created "in a manner not inconsistent with" Ch. 58.17 RCW.

TITLE COMMENT 2: A miscellaneous community that (a) is not subject to any development rights, AND (b) contains no more than twelve units, AND (c) provides in the declaration that average annual assessments for residential units are less than \$300 (to be adjusted for inflation) is only subject to three WUCIOA sections^b (although the declaration can provide that all of WUCIOA applies).⁴³

A miscellaneous community that does not create any "stacked" vertical units (that is, all units are side-by-side, and no unit is above or below another unit) would have characteristics common to a plat community. Thus, if a CIC purports to be a miscellaneous community but has all the characteristics of a plat (especially if there are no common areas), the insurability of a unit (in particular, the availability of a subdivision endorsement) should be referred to title company underwriting.

See elsewhere in this material for a discussion of the need for a survey when insuring a unit in a miscellaneous community.^c

2.9 UNIT

A *unit* is the individually defined space (separating it from other units and from common elements) within the CIC. The unit can be sold or leased independent of other units. In context of the requirements of WUCIOA, it includes lots and tracts in a platted subdivision (and this material uses "units/lots" in context of plat communities and miscellaneous communities), and defined spaces in condominiums, cooperatives and miscellaneous communities.

TITLE COMMENT

In a condominium or cooperative, any defined space can be a unit. Thus, parking spaces, moorage slips and airplane tie-down spaces (as examples) that are more

^a "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. RCW 64.90.010(11).

^b RCW 64.90.020 (separate titles and taxation), RCW 64.90.025 (applicability of local ordinances, regulations, and building codes) & RCW 64.90.030 (eminent domain). See also "Exemptions to WUCIOA" in §9.0 on page 44

^c See "Distinction Between "Map" and "Survey" under WUCIOA" in §5.0 on page 31



commonly designated as limited common elements (LCE) can be units. A project might have some of these elements, such as parking spaces, that are units and some that are LCE.

It is important that the declaration and the map be consistent when distinguishing such areas, and that if the spaces are intended to be units (typically airspace units, or units with some physical boundaries and some airspace boundaries^a) that they meet the statutory requirements.

The boundaries of all units must be surveyed, except for some cooperatives.⁴⁴

2.10 COMMON ELEMENTS

Common elements are all of the CIC land except the units. While it is typical that most CICs have common elements (and they are an essential element for condominiums and cooperatives), not all plat communities or miscellaneous communities will have them.^b

2.10.1 CONDOMINIUM COMMON ELEMENTS

A condominium has common elements, which must be owned by the unit owners as tenants in common. Common elements are essentially everything that is not within the boundaries of a unit. Common elements are (1) not separately taxable, and (2) not subject to partitioning.⁴⁵

TITLE COMMENT

A condominium always has common elements.⁴⁶ Also, when units are added by phasing,^c all common elements are essentially a single parcel, and all unit owners own an undivided interest in the entirety of all common elements. This interest is an indivisible element of the distinct title to the wholly owned unit.

In contrast, while a plat community may have common elements that are owned by the lot owners as tenants in common,^d that title is independent of title to the lot.

2.10.2 COOPERATIVE COMMON ELEMENTS

In a cooperative, the title to all of the land, including the units, is owned by the owners association, but the land (and any improvements, such as a building structure) outside of the unit boundaries is common elements. Cooperative common elements are not separately taxable and are not subject to partitioning.⁴⁷

^a See “Units Without Physical Boundaries” in §12.2 on page 52

^b See also “Conveyance or Encumbrance of Common Elements after CIC Created” in §4.6 on page 29.

^c See “Phasing – Adding Land & Units” in §16.1 on page 64 and “Phasing – Adding New Units in Common Elements” in §16.4 on page 66)

^d See “Plat or Miscellaneous Community Common Elements” in §2.10.3 on page 18



2.10.3 PLAT OR MISCELLANEOUS COMMUNITY COMMON ELEMENTS

A plat community or miscellaneous community may or may not have common elements, but if it does, they would be separate parcels, independent of the units/lots. (They could of course, still be identified as “lots”, “tracts” or “parcels” or some similar term.)

There are three common approaches to effectuating the desired type of ownership of such land:

1. the parcel(s) can be conveyed by the declarant to the owners association before the first lot/unit is conveyed,
2. the parcel(s) can be owned by the lot/unit owners in undivided interests as tenants in common by virtue of a dedication on the face of the map or in the declaration/CCRs, or
3. the parcel(s) can be owned by the unit/lot owners in undivided interests as tenants in common by virtue of being conveyed by the declarant to each lot/unit owner as each lot/unit is sold. (Note that this latter option is not expressly contemplated by WUCIOA.⁴⁸)

TITLE COMMENT

THE DECLARATION MAY PROVIDE OTHERWISE. Any variation from these methods of common element ownership should be referred to title insurance underwriting.

The approach to common elements used for a particular plat is generally not an issue for title insurers unless (a) title to such common elements is to be insured, or (b) such undivided interest is requested to be included in the legal description or vesting for the unit/lot being insured. However, the title company may require one of the above options to be effective at the time the plat is recorded.

These parcels may be taxed separately, particularly if title is held in the name of the owners association.

TITLE COMMENTS

COMMENT 1: Note that if, for whatever reason, title is not conveyed by the declarant to the owners association or expressly dedicated to the lot/unit owners as tenants in common, RCW 64.90.200(3)(c) provides that title to the common elements is deemed conveyed to the owners association at the time the first unit is conveyed.

However, the title company should refer any request to insure title in the owners association based on this statute to senior underwriting.

COMMENT 2: A common element tract or parcel in a plat can also be allocated as a limited common element to one or more lots.^a

2.11 LIMITED COMMON ELEMENTS

Limited common elements are portions of the common elements reserved for the use of one or more, but not all, units.⁴⁹ In most cases, LCE will apply to condominiums and cooperatives, since platted lots typically include such areas within the unit/lot boundaries.

^a See “Limited Common Elements” in §2.11 and also see “Limited Common Elements” in §14.0 on page 58, and as to the map, see “Limited Common Elements” in §17.8.9 on page 79



However, a common element tract or parcel in a plat community or miscellaneous community can be allocated as a limited common element to one or more, but not all, units (lots). An example might be a separate access tract in a short plat, which will not be part of any of the lots but that would serve fewer than all of the lots.^a

TITLE COMMENT

In a condominium, certain elements of a property that are commonly designated as LCE, such as parking spaces, boat moorage slips or airplane hangar spaces, can be alternatively be created as units instead of remaining portions of the common elements to be allocated as LCE. The map and declaration must be consistent in distinguishing between units and LCE.

2.12 DEVELOPMENT RIGHTS

Development rights^b are rights reserved in the declaration to, among other things:

1. add land (which land can, but need not be, described in the declaration) with newly created units (commonly referred to as “phasing”,^c
2. create new units within the common elements (another form of phasing^d),
3. convert/subdivide a unit into additional units,^e and
4. withdraw land from a CIC.⁵⁰

This is distinguished from a “special declarant right”.^f A special declarant right can include the right to exercise a development right, but special declarant rights themselves generally do not relate information shown on a map.^g

In a plat community or miscellaneous community, phasing does not typically involve adding new units/lots to the existing plat. Rather, it would involve either a new CIC on additional land or a new CIC imposed upon “development” tracts within the plat. In either event the new CIC adopts or imposes the existing declaration/CCRs of the first phase.

Also, see “Post-WUCIOA Phases Added to Pre-WUCIOA Projects” in §8.0 below on page 40 for a discussion of phases added to pre-WUCIOA projects.

^a See “Limited Common Elements” in §14.0 on page 58, and “Limited Common Elements” in §17.8.9 on page 79.

^b See also “Development Rights” in §16.0 on page 63 for more discussion of development rights

^c See “Phasing – Adding Land & Units” in §16.1 on page 64)

^d See “Phasing – Adding New Units in Common Elements” in §16.4 on page 66

^e See “Phasing – Subdividing Units” in §16.5 on page 67

^f See “Special Declarant Rights” in §2.13

^g See “Development Rights” in §16.0 on page 63 for additional discussion of development rights.



2.13 SPECIAL DECLARANT RIGHTS

Special declarant rights are those rights reserved to a declarant that in general do not impact the preparation of a map. They include the right to exercise a reserved development right, including the right to use the common elements for purposes of exercising those rights.⁵¹

2.14 CONVERSION BUILDING

WUCIOA defines a *conversion building*⁵² in context of declarant disclosures, notices and occupancy rights. In general, for purposes of map preparation and certifications by the surveyor, there is no distinction between new construction and a conversion building. In general, conversions do not factor in to the map requirements of WUCIOA.

TITLE COMMENT

To the extent that a surveyor might also provide engineering services that address declarant obligations relating to conversion buildings, this material does not discuss those issues.

2.15 PUBLIC OFFERING STATEMENT

The *public offering statement* (“POS”) is a disclosure document that must be prepared by the developer and delivered to prospective unit purchasers for most new CICs.⁵³ It must be accompanied by the declaration and map.⁵⁴

Some items (“principal common amenities”^a) required to be included in a POS must be on the map.⁵⁵ Thus, the surveyor should see the POS as soon as a draft is available and review the final POS prior to certifying the map.

The declaration and map may be provided to a prospective purchaser in draft form for purposes of the POS.^b

2.16 LARGE SCALE COMMUNITY

The declaration can state that the CIC is a large scale community⁵⁶ if (a) the declarant reserves the right to create at least five hundred (500) units that may be used for residential purposes, and at the time of that declaration the declarant owns or controls five hundred (500) acres on which the units may be built.

The statute does not define what “controls” means. It also does not expressly require the declaration to describe the land comprising the five hundred acres, nor to designate what land is owned and what land is controlled by the declarant.

Once a unit in a large scale community is conveyed, the declaration must be amended to comply with WUCIOA with respect to describing both the unit and the land on which any conveyed unit is

^a See “Principal Common Amenities” in §17.8.14 on page 81

^b See “Draft Map” in §17.1 on page 68



located. Other land comprising part of the five hundred acres are not subject to WUCIOA provisions until the declaration is further amended to add land and or units.

In effect, a declaration may be recorded that does not create any units for conveyance and a review checklist need not be utilized until such time as it is amended.

TITLE COMMENT

Any declaration for a large scale community (whether being reviewed before or after units and land are added), should be referred to title company underwriting, even if a unit is not being conveyed as part of a pending transaction. Such transactions might involve a conveyance or encumbrance of part of the large scale community.

Once (a) any unit has been conveyed, and (b) land upon which any unit that has been conveyed is added, that portion of the large scale community will be treated as a CIC. Prior to that, there is no need to confirm before then whether the declarant of a purported large scale community owns or controls at least 500 acres. In addition, if all 500 units are ultimately not created, this will presumably not affect the title insurability of those units that have been created by amending the original declaration and map.

2.17 BINDING SITE PLAN

Under the WCA (*but not WUCIOA*), a condominium on a portion of a legal lot could be exempt from platting if the entirety of the lot was first subjected to a binding site plan (BSP).⁵⁷ This required that all the land eventually be included in one or more condominiums.

TITLE COMMENT

IMPORTANT: This exemption applies to condominiums created under Ch. 64.32 RCW and 64.34 RCW, and thus is not applicable to condominiums created after July 1, 2018, under WUCIOA.^a

However, it may be possible to record a WUCIOA-compliant condominium after July 1, 2018, on a portion of a binding site plan recorded prior to that date. Refer such situations to title company underwriting.

In addition, a later phase of a non-WUCIOA condominium might also be recorded on the binding site plan if it meets the criteria set forth in the statute.^b

3.0 TITLE REPORT

The surveyor should receive a current report on the title to the land being subjected to a CIC. A **title report** is usually in the form of a **subdivision guarantee**. Such title reports (which should not be recorded) are typically required by a city or county when processing applications for plats under Ch. 58.17 RCW, and can be used by the developer, the developer's attorney and the surveyor for CIC

^a See also "Subdivision Compliance by CIC" in §4.2 on page 23.

^b See "Subdivision Compliance by CIC" in §4.2 on page 23 and "Condominium Phases recorded Before and After July 1, 2018" in §8.1 on page 41



preparation as well. A title report will reflect the public record as to the ownership, encumbrances and legal description of the land that is to become a CIC, including in some cases, future phase land. Any recorded easements, restrictions, liens and similar matters of record affecting the land (whether encumbering it or appurtenant to it) should also be in the report.

TITLE COMMENT

The surveyor should notify the title company and the developer's attorney at once if the surveyor's data in any way conflicts with the title report.

For example, there may be apparent easement or similar rights (such as might arise from encroachments) observed by the surveyor that are potentially appurtenant to or encumber the CIC land that are not shown on the title report.⁵⁸

Other examples include possible new easements appurtenant or encumbering that are intended to be created during the development process.^a

All such matters, even recorded easements that are purportedly appurtenant but not deemed sufficient for title insurance purposes by a title company, should be discussed with the title company and the declarant's attorney, but still must be shown on the map.

Prior to certifying and signing the map, the surveyor should request an updated title report.

The map, along with the declaration, should be submitted for review and approval by a title insurance company, preferably well in advance of recording. It is easier to correct and update either document, but especially the map, prior to recording than to amend them after they are recorded.

4.0 SUBDIVISION OF LAND IN GENERAL

Subdivision of land is often thought of in the context of creating side-by-side parcels, with only vertical boundaries between them. This can be done using legal descriptions to establish the boundaries without formal platting. Ch. 58.17 RCW imposes limitations and requirements on most such subdivisions (also called plats) in Washington, although there are exemptions.⁵⁹

Thus, a plat created pursuant to local ordinances based on Ch. 58.17 RCW, has historically been a side-by-side subdivision of lots where there are no defined horizontal (upper or lower) boundaries (the concept has been described as extending "from the center of the earth to the heavens above").

It is also possible to create separate parcels of land that are stacked vertically (a separate parcel located above or below another distinct parcel), again by use of legal descriptions to define the horizontal (upper and lower) boundaries in addition to the traditional vertical (side) boundaries.

A condominium, particularly and historically in the context of a multistory building with residential dwelling units, has been the most common way to subdivide land vertically. The statutory process of expressly permitting such a division of land not only provides for separate ownership of the individual units without utilizing Ch. 58.17 RCW but also enables separate taxation and encumbrance of the individual units.

^a See "New Road Dedications & Easements" in §11.0 on page 47



Under WUCIOA, a cooperative is also a permitted form of vertical division of land, as is a miscellaneous community. Each can involve units that are either stacked vertically or located side-by-side.

However, until WUCIOA provided for a miscellaneous community, while a vertical subdivision could be (and has been) the subject of a plat or non-formal lot division, local subdivision ordinances may not expressly contemplate it. In addition, separate taxation of the created “lots” might not be available in a particular jurisdiction. And, financing might not be available even if the parcels are separately taxed. Presumably, the creation of a miscellaneous community could be utilized to address such situations.

Nonetheless, any attempt to vertically subdivide land other than as a condominium or cooperative, even as a miscellaneous community, should be referred to title company underwriting.

4.1 TITLE INSURANCE AND SUBDIVISION IN GENERAL

Title insurance policies exclude matters relating to subdivision compliance or violations thereof.⁶⁰ Although affirmative coverage endorsements related to certain subdivision matters are often requested by insureds, they might not be available for certain types of subdivisions if there is any question as to whether the insured land is a “legal lot.”

Similarly, with respect to CICs (particularly condominiums), endorsements relating to compliance with enabling legislation (such as the HPR, WCA or WUCIOA) may or may not be available with respect to units in CICs, depending on the result of the title company’s review of the CIC documents.^a

Note that whether or not the project is a CIC, and even if there are no CCRs (or no WUCIOA declaration) that address such matters, the title policy might still except from coverage matters inherently applicable to ownership of stacked or adjoining parcels that may not be “legal” lots. Examples of such exceptions include rights of support (for improvements located in the upper or adjoining parcels), access to individual parcels, so-called party wall rights and obligations, lateral support (evidenced by retaining walls, for example) and similar maintenance rights and/or obligations.

4.2 SUBDIVISION COMPLIANCE BY CIC

Additional discussion of subdivision issues, particularly with respect to the need for surveys, is discussed elsewhere in this material.^b

WUCIOA does not change the general application of Ch. 58.17 RCW with respect to subdivisions in Washington. Platting approval agencies would still approve subdivisions and apply survey standards (including short plats, plats and binding site plans) in the same manner as was done prior to WUCIOA.

Condominiums (and now cooperatives) are still exempt from that process. That is, a *condominium* or *cooperative* (that is, a CIC that is not a plat community or miscellaneous community) can be created on the entirety of any legal lot or multiple legal lots, without requiring a separate plat that would be subject to conformance with Ch. 58.17 RCW.⁶¹ However, if any portion of a legal lot is to be subjected

^a Title insurance checklists are or will be available for most CICs.

^b See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31



to a *condominium* or *cooperative* CIC, a plat, short plat or binding site plan or large lot exemption is first required.

TITLE COMMENTS

COMMENT 1: **IMPORTANT** – As to condominiums, this differs from condominiums created under the WCA. Under the WCA a *condominium* (only) on a portion of a tax parcel might be exempt from platting if a binding site plan^a was first used to “subdivide” all the property as permitted by statute⁶² and local ordinances adopted pursuant thereto.

HOWEVER, RCW 58.17.040(7) only provides an exemption for condominiums created under Ch 64.34 RCW. It **was not amended** to provide an exemption when a binding site plan is used to accommodate a condominium (or any other CIC) created under WUCIOA Ch. 64.90 RCW after July 1, 2018.

COMMENT 2: It may be possible to record a WUCIOA-compliant condominium after July 1, 2018, on a portion of a binding site plan that was recorded prior to that date. In addition, it may be possible to add a non-WUCIOA phase to a condominium created on a portion of a binding site plan if it complies with the statute.^b Any request to utilize a binding site plan in connection with the creation of a condominium after July 1, 2018, should be referred to the title company’s underwriting or counsel.

COMMENT 3: Parcels or tracts in a binding site plan are not necessarily “legal lots” nor required to be segregated into tax parcels by the assessor. Apart from WUCIOA considerations, requests to insure a parcel created by a binding site plan should be referred to title company underwriting.

As to property in a *miscellaneous community* that is otherwise in compliance with the requirements and exemptions in Ch. 58.17 RCW⁶³ also does not need to be subject to a separately recorded plat.^c

Finally, a *plat community* must be compliant first as a subdivision pursuant to Ch. 58.17 RCW.

That said, WUCIOA does not impose any obligation or requirement on the local subdivision platting approval authority to either (a) confirm that it is also a WUCIOA plat community or (b) to confirm compliance with WUCIOA.

Once the declaration for a WUCIOA-compliant CIC is recorded, the units thereby created are “legal lots.”

Note also that any unit in any CIC can itself be subjected to another CIC.⁶⁴ For example, in a mixed use project, separate units can be created on the land (perhaps the entirety of the property would be a miscellaneous community,^d each intended for a different use (a commercial/retail space, a hotel, an office building, a parking garage and a residential condominium, for example). Then, a condominium

^a See “Binding Site Plan” in §2.17 on page 21.

^b See “Condominium Phases recorded Before and After July 1, 2018” in §8.1 on page 41

^c See also “Miscellaneous Communities” in §7.0 on page 38

^d See “Miscellaneous Communities” in §7.0 on page 38



or cooperative CIC that is intended for one of those uses could be created within individual miscellaneous CIC units.

4.2.1 ROLE OF SUBDIVISION APPROVAL AGENCY

It is important to understand the role of the local platting approval authority in the creation of CICs.

4.2.1.1 CONDOMINIUMS AND COOPERATIVES

As to a condominium or cooperative, the local subdivision (platting) approval process does not apply, including with respect to compliance with Ch. 58.17 RCW.⁶⁵ Both the declaration and map are exempt from review and approval by the city or county subdivision approval authority and can be recorded without review. However, the land subjected to the declaration must itself be comprised of one or more “legal lots” and not in violation of Ch. 58.17 RCW. Such CICs should not be submitted for approval by such agencies.

4.2.1.2 PLAT COMMUNITIES

As to a plat community, WUCIOA does not impose any *additional* requirements on the local subdivision approval authority to either (a) confirm that it is also a CIC plat community under WUCIOA or (b) to confirm compliance with WUCIOA with respect to those requirements imposed by WUCIOA.^a

In fact, as to a plat community, many requirements imposed by WUCIOA can be contained in the declaration (which might not be submitted with the draft plat in the review and approval process)^b and thus need not be on the face of the plat survey map.⁶⁶ Thus, a plat survey prepared for a plat community may look like a pre-WUCIOA plat, with WUCIOA required information instead shown on a map attached to the declaration.

If WUCIOA information is included in the plat map, the platting approval agency need only confirm compliance with Ch. 58.17 RCW, and local ordinances adopted pursuant thereto.

4.2.1.3 MISCELLANEOUS COMMUNITIES

A miscellaneous community map may have to be confirmed as in compliance (or not inconsistent) with Ch. 58.17 RCW^c before it can be recorded.⁶⁷

4.2.2 ROLE OF COUNTY RECORDER’S OFFICE

WUCIOA does not impose any requirements on the county recorder’s office to either (a) confirm that a declaration or map is also a CIC under WUCIOA or (b) to confirm compliance with WUCIOA with respect to any requirements imposed by that statute.

^a See also “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31 & “Summary of Map and Survey Requirements under WUCIOA” in §5.3 on page 36

^b Also see a form of certificate on SCHEDULE G.

^c See “Subdivision Compliance by CIC” in §4.2 on page 23



If any apparent CIC is being created by a declaration recorded without a map, or by a map without a declaration, the recorder’s office may inquire as to the intent, since condominium surveys, plat maps and surveys typically have to be indexed to the correct category of survey.

The county recorder’s office may need to determine how to index a WUCIOA map that is not a plat or condominium. Whether it is categorized as a cooperative, miscellaneous community or some other survey or map category (particularly if it is not also a survey) is up to each county. How that is done should not affect review for WUCIOA compliance by a title insurer, as long as the map is recorded and the cross-referencing requirements⁶⁸ are met.^a

4.2.3 ROLE OF COUNTY ASSESSOR’S OFFICE

A county may require that a CIC declaration be reviewed and approved by the county assessor solely for the purpose of assessing value and property taxes.⁶⁹ The map must be submitted^b to the assessor.⁷⁰

4.2.4 NATIVE AMERICAN LANDS

A CIC project located within the boundaries of a Native American reservation may be a CIC by Washington statutory definition but because of the tribe’s jurisdiction inside reservation boundaries there may be questions as to the applicability of WUCIOA.

TITLE COMMENT

Any unit, or any portion land, within an apparent CIC that is created within the boundaries of a Native American reservation should be referred to senior title company underwriting, even if the project complies with Ch. 64.90 RCW for title insurance purposes. Examples of additional issues to consider include, but may not be limited to:

1. the location of the reservation boundaries,
 2. compliance with city or county subdivision ordinances if the tribe has agreed to be subject to state or local subdivision laws,
 3. compliance with tribal subdivision requirements, if any
 4. compliance with provisions of WUCIOA not related to land use or regulatory matters, including disclosures to proposed insured purchasers and lenders, and procedural requirements imposed on proposed insured declarants, associations, unit owners and lenders, and
 5. general compliance with the title insurer’s guidelines, if any, for the issuance of subdivision and/or CCR-related endorsements.
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^a See “Recording Data Cross-Reference” in §17.3 on page 70

^b See also “Assessor Review” in §17.4 on page 70



4.3 WHEN NOT A LEGAL LOT

If any single CIC is to be created on only a portion of any existing legal lot (typically, but not necessarily, based on tax parcels), a subdivision is required to create a legal lot or lots upon which the CIC can then be created.^a

This would be a plat (including a short plat, or in some cases a binding site plan, if permitted by local ordinance). With respect to condominiums created *under the WCA* prior to July 1, 2018, a binding site plan pursuant to RCW 58.17.040(7), if permitted by local ordinance, could have been utilized to create a legal lot or lots upon which future condominiums could then be created. This does not address post-WUCIOA condominiums or condominium phases involving a binding site plan.^b

If a subdivision is not done, endorsements relating to either, or both, subdivision compliance or WUCIOA compliance may not be available.

TITLE COMMENT

Requests to insure any unit, or any portion of CIC land, within a CIC that is not itself created on the entirety of one or more “legal lots” should be referred to title company underwriting.

4.4 WITHDRAWAL OF LAND – DEVELOPMENT RIGHT

The following applies mainly to condominiums, cooperatives and miscellaneous communities. As to a plat community, withdrawal of land, while possibly requiring a plat amendment pursuant to Ch. 58.17 RCW, would not normally affect title, or insurability of title, to individual remaining units/lots. In addition, if an amendment to a plat community is required by Ch. 58.17 RCW, the withdrawn land would presumably constitute a “legal” lot.

Partial withdrawal under WUCIOA, which involves separating an existing CIC into two or more parcels for separate ownership, is a form of subdivision.

Thus, if a CIC other than a plat community has been initially created on the entirety of one or more legal lots, and the declarant elects to withdraw a portion of the land pursuant to a reserved development right,⁷¹ the land may have to be subdivided pursuant to the requirements of Ch. 58.17 RCW.

This would be a complicated process, which may or may not require joinder of all unit owners, to the extent that they are owners (especially in a condominium, by virtue of their title to an undivided interest in the common elements) of the land being subdivided.

However, if the particular portion of land that is to be withdrawn from the CIC was a legal lot prior to the creation of the CIC, a subdivision complying with Ch. 58.17 RCW may not be a necessary component of the withdrawal process. If withdrawal of a portion of a CIC is planned, the issue should be discussed with a title company, and may need to be run by the local platting agency.

^a See also “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31

^b For post-WUCIOA condominiums or condominium phases involving a binding site plan, see “Binding Site Plan” in §2.17 on page 21, “Subdivision Compliance by CIC” in §4.2 on page 23, and “Condominium Phases recorded Before and After July 1, 2018” in §8.1 on page 41.

In any withdrawal situation (other than for a plat community), an amendment to the map will be required to revise the legal description of the CIC and to revise the survey drawing to reflect the new CIC legal description.⁷²

In addition, withdrawal of CIC land will require an amendment to the declaration to revise the legal description of the CIC land and, if necessary, reallocate the allocated interests if unsold units are included in the withdrawn land.

TITLE COMMENT

Note that there is no express requirement for a declaration amendment, HOWEVER, all map amendments^a must be accompanied by an amendment to the declaration.⁷³

Note that WUCIOA contemplates the withdrawal of all of the CIC land (assuming that no unit has been sold).⁷⁴ Assuming no units have been sold, such a withdrawal would be more appropriate than a termination contemplated by RCW 64.90.290.

TITLE COMMENT

Any withdrawal of CIC land, even if pursuant to a reserved development right, should be reviewed by title company underwriting.

4.5 WITHDRAWAL OR PARTIAL TERMINATION – NOT PER DEVELOPMENT RIGHT

There may be circumstances in which common elements of a CIC other than a cooperative (and as to a cooperative, a portion of the land comprising the cooperative) could be withdrawn from a CIC (a) independent of a conveyance of that land to a third party pursuant to RCW 64.90.465, and (b) not in connection with a reserved development right. The process might also be referred to as a partial termination, and might be assumed as appropriate, particularly if a conveyance is intended to occur subsequent to the withdrawal or partial termination.

If done, the approval process must comply with either the statutory provisions for conveyance of common elements⁷⁵ or a termination of the CIC⁷⁶ even though it would not be a complete termination of the entire CIC.

The declaration and map must be amended^b when the boundaries of the CIC are altered. In any event, such an action could be subject to compliance with subdivision requirements in accordance with Ch. 58.17 RCW.

A termination can also be subject to review by the county assessor solely for the purpose of re-allocating the assessed value for ad valorem tax purposes.⁷⁷ While this statute refers to full termination, it would necessarily be applicable to any partial termination or withdrawal.

^a See also “Map Amendments” in §18.0 on page 86

^b See also “Map Amendments” in §18.0 on page 86



TITLE COMMENT

Any withdrawal of or purported “partial termination” as to CIC land by the association should be reviewed by title company underwriting.

4.6 CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS AFTER CIC CREATED

A conveyance of common elements after the creation of a CIC, although contemplated and in some cases permitted by WUCIOA,⁷⁸ might impact subdivision compliance.

Note that common elements may also be encumbered, and the effect, if there is a later foreclosure, is the same as if the land was conveyed.

The declaration and map must both be amended to reflect the changes to the legal description of the project in conjunction with the conveyance. This requirement would be imposed on a lender who forecloses on an encumbrance of common elements. Note that the statute merely provides that the undivided interests of the unit owners (and unit encumbrances as to those interests) in the conveyed land are terminated after the conveyance.⁷⁹

TITLE COMMENT

Any revision of a CIC by conveyance of a portion of the land should be reviewed by the title company underwriting and may need to be reviewed or approved by the local platting agency. Requirements for a formal subdivision may be imposed on the owners association and/or individual unit owners.

4.6.1 CONVEYANCE/ENCUMBRANCE OF COMMON ELEMENTS – CONDOMINIUM

If, after the creation of a condominium, the owners association conveys any part of the common elements as permitted by statute,⁸⁰ the declaration and map should be amended to reflect the revised legal descriptions. As with a withdrawal by a declarant^a this may result in a need to comply with local subdivision requirements pursuant to Ch. 58.17 RCW, even if considered a lot line adjustment.

TITLE COMMENT

Again, notwithstanding the ability of the owners association to make the conveyance on behalf of the unit owners, the local platting agency might impose additional requirements.

If the declaration and map are not amended, title companies will take exception for the effect of the conveyance in any title commitment or policies written on remaining individual units. In addition, the legal description of individual units after a conveyance but before any related amendments have been recorded, may exclude any “land” that was conveyed and that would otherwise be considered part of the common elements, pending the amendments.

^a See “Withdrawal of Land – Development Right” in §4.4 on page 27



As to the conveyed land, title insurance (including endorsements relating to subdivision or compliance with enabling statutes), if available, would probably be, in part, conditioned on the existence and sufficiency of such amendments. Appropriate exceptions to coverage relating to the CIC would probably be shown in any title commitment or policy, pending the amendments.^a

4.6.2 CONVEYANCE/ENCUMBRANCE OF COMMON ELEMENTS – COOPERATIVE

If, after the creation of a cooperative, the owners association conveys any part of the land comprising the cooperative as permitted by statute,⁸¹ the declaration and map should be amended to reflect the revised legal descriptions. As with a withdrawal by a declarant^b this may result in a need to comply with local subdivision requirements pursuant to Ch. 58.17 RCW, even if considered a lot line adjustment. Again, notwithstanding the ability of the owners association to make the conveyance on behalf of the unit owners, the local platting agency might impose additional requirements.

If the declaration and map are not amended, title companies will take exception the effect of the conveyance in any title commitment or policies written on individual units.

Title insurance for the conveyed land would probably be, in part, based on such amendments.

4.6.3 CONVEYANCE/ENCUMBRANCE OF COMMON ELEMENTS – MISCELLANEOUS COMMUNITY

As with a plat community, common elements in a miscellaneous community would be separate parcels, and although WUCIOA addresses the procedures for conveying them,⁸² it would not normally impact the map, particularly if the conveyance was of the entirety of the common element tract. If a portion of such tract is to be conveyed, an amendment to the CIC declaration and map might be required in addition to a plat pursuant to Ch. 58.17 RCW so that the resulting CIC land is “...not inconsistent with Ch. 58.17 RCW”⁸³. However, such changes to the CIC land should not impact the title to any individual unit/lot.

4.6.4 CONVEYANCE/ENCUMBRANCE OF COMMON ELEMENTS – PLAT COMMUNITY

Common elements in a plat community would typically be separate lots, and although WUCIOA addresses the procedures for conveying them,⁸⁴ it would not normally impact the map, particularly if the conveyance was of the entirety of a common element tract. If a portion of such tract is to be conveyed or encumbered, any amendment would be pursuant to Ch. 58.17 RCW, but would not impact the title to any remaining individual unit/lot. Title insurance for the conveyed land would be subject to title company review of both the process required by statute and the form of ownership of the common element parcels.^c

^a See “New Road Dedications & Easements” in §11.0 on page 47 for a discussion of dealing with potential reduction of the size of a CIC prior to the creation of the CIC

^b See “Withdrawal of Land” in §4.4

^c See a discussion of common element ownership in the “Plat and Plat Community” in §2.7 on page 14



4.7 PUBLIC LANDS AS PART OF A CIC

A declarant may create a CIC on public lands, such as harbor areas and tidelands owned by the State of Washington. The declarant will typically have a leasehold estate on such lands.

A lease of a portion of public land, such as from the State of Washington or a port authority, may not require a subdivision. Such leases have been common with moorage condominium CICs created under the WCA. Leases of public lands may also require an analysis of the legal descriptions used in such leases.^a

TITLE COMMENT

Any CIC that is created on or that includes a leasehold estate on any portion of public lands should be reviewed by title company underwriting.

5.0 DISTINCTION BETWEEN “MAP” AND “SURVEY” UNDER WUCIOA

WUCIOA defines and uses both “map”^b and “survey”^c. These terms are not generally intended to be synonymous or interchangeable in WUCIOA. This section discusses the distinction between these terms as contemplated by WUCIOA and outlines some specifics regarding WUCIOA requirements.

Questions arise as to the nature of the map that under WUCIOA must be recorded contemporaneously with the declaration^d for every CIC.⁸⁵ The principal question is whether this map must also be a survey.

The short answer is that, with only a few exceptions discussed elsewhere in this material (particularly relating to cooperatives,^e miscellaneous communities,^f CICs created on property within a binding site plan, a short plat, or a so-called “large lot” subdivision), the map must either be a survey, include a survey, or be map that is not inconsistent with Ch. 58.17 RCW and complies with WUCIOA map requirements.

It is important to note that WUCIOA does not alter either the process of surveying or the mapping thereof described in Ch. 58.09 RCW (the State Subdivision Act) with respect to plats (which includes short plats and binding site plans).⁸⁶ Instead, with respect to plats, WUCIOA requires that

1. a CIC map must show that certain information specified in RCW 64.90.245, and
2. the information must appear on any *required* survey.

The following sections discuss surveys in context of Washington subdivision laws as they relate to WUCIOA.

^a See also “Legal Descriptions” in §17.8.1 on page 74

^b See “Map” in §2.3 on page 10

^c See “Survey” in §2.4 on page 12

^d See “Declaration” in §2.2 on page 10

^e See also the definition of “Cooperative” in §2.6 on page 13

^f See also the definition of “Miscellaneous Community” in §2.8 on page 15



5.1 WHAT IS A SURVEY AND WHEN IS IT REQUIRED?

Under WUCIOA, the term “survey” has the same meaning as defined in RCW 58.09.020.⁸⁷ Note that no subpart of RCW 58.09.020 is identified in WUCIOA, but the term “survey” does appear in RCW 58.09.020(3), which provides the following definition:

(3) “Survey” shall mean the ***locating and monumenting in accordance with sound principles of land surveying*** by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.

The phrase “locating and monumenting” describes a process rather than a map. The map that must be produced and recorded after “locating and monumenting” is called a “record of survey”, as follows:

RCW 58.09.040

Records of survey – Contents – Filing – Replacing corner, filing record.

After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor...[etc.]

A survey necessarily incorporates all survey standards that are in Ch. 58.09 RCW and related WAC sections (such as WAC 330-130-050 and WAC 196-29-110, for example).

5.1.1 SURVEY REQUIRED FOR CONDOMINIUM

WUCIOA requires a survey⁸⁸ for a condominium.^a

In addition, the land subjected to the CIC must itself be a “legal lot.”⁸⁹

As with other CICs, a condominium can be created on one or more

1. pre-existing legal parcels of record that are not included in another CIC, or
2. lots in a plat (units in a plat community), or
3. units in another condominium, or
4. units in a miscellaneous community, or
5. (theoretically) units in a cooperative^b

that would otherwise meet that “legal lot” requirement.⁹⁰

TITLE COMMENT

Any CIC created a unit in another CIC, particularly a unit in a cooperative, should be referred to title company underwriting for review.

^a Note that a survey has been required for condominiums since 1990 under the WCA and WUCIOA does not change that.

^b BUT see also “Survey Requirement for Cooperative” in §5.1.3 on page 33 with respect to a cooperative that was created without a survey.



5.1.2 SURVEY REQUIRED FOR PLAT COMMUNITY

The record of survey is required to be a part of a plat⁹¹ created pursuant to Ch. 58.17 RCW which can be subjected to a CIC. Consequently, a plat community requires a survey.

The land subjected to a plat community must itself be a “legal lot,”⁹² and of local subdivision ordinances would require it.

As with other CICs, a plat community can be created on one or more

1. pre-existing legal parcels of record that are not included in another CIC, or
2. lots in another plat (units in a plat community), including a short plat,^a or
3. units in a miscellaneous community, or
4. (theoretically) units in a condominium, or
5. (theoretically) units in a cooperative^b

that would otherwise meet that “legal lot” requirement.⁹³

While a plat community could be created on another CIC⁹⁴ (and it is not unusual for an existing plat or short plat, or even a “large lot” subdivision, to be re-platted), it would be unlikely that a plat community would be created on one or more units in a condominium or cooperative.

TITLE COMMENT

Any CIC created on a unit in another CIC, particularly a plat community created on a unit in a condominium or a cooperative, should be referred to title company underwriting for review.

5.1.3 SURVEY REQUIREMENT FOR COOPERATIVE

The land subjected to a cooperative must itself be a “legal lot.”⁹⁵

As to the cooperative itself, a survey is optional for a cooperative.⁹⁶ If the declarant opts to forgo a survey, it must still provide a map that contains the information required by RCW 64.90.245, and certify that information to the same extent that a surveyor would if a survey was used.^c

As with other CICs, a cooperative can be created on one or more

1. pre-existing legal parcels of record that are not included in another CIC, or
2. lots in a plat (units in a plat community), including a short plat,^d or
3. units in a miscellaneous community, or

^a But, see “Survey Requirement for a CIC on a Short Plat” in §5.1.65.1.6

^b BUT see also “Survey Requirement for Cooperative” in §5.1.3 on page 33 with respect to a cooperative that was created without a survey.

^c See **SCHEDULE E** for sample certificate

^d But, see “Survey Requirement for a CIC on a Short Plat” in §5.1.65.1.6



4. (theoretically) units in a condominium, or
5. (theoretically) units in another cooperative

that would otherwise meet that “legal lot” requirement.⁹⁷

While a cooperative could be created on another CIC,⁹⁸ it would be unlikely that a cooperative would be created on one or more units in a condominium or another cooperative.

TITLE COMMENTS

TITLE COMMENT 1: Any request to insure a unit in a cooperative where the map is not a survey should be reviewed by title company underwriting.

TITLE COMMENT 2: Any CIC created on a unit in another CIC, particularly a cooperative created on a unit in a condominium or another cooperative, should be referred to title company underwriting for review.

5.1.4 SURVEY REQUIREMENT FOR MISCELLANEOUS COMMUNITY

WUCIOA neither expressly requires a survey for a miscellaneous community nor expressly exempts a miscellaneous community from a survey requirement.

However, the land subjected to the miscellaneous community must itself be a “legal lot.”⁹⁹

As with other CICs, a miscellaneous community can be created on one or more

1. pre-existing legal parcels of record that are not included in another CIC, or
2. lots in a plat (units in a plat community), including a short plat,^a or
3. units in another miscellaneous community, or
4. (theoretically) units in a condominium, or
5. (theoretically) units in another cooperative^b

that would otherwise meet that “legal lot” requirement.¹⁰⁰

In addition, the miscellaneous community cannot create units that would be inconsistent with Ch. 58.17 RCW.¹⁰¹

A miscellaneous community might be created on one or more lots in a “large lot” subdivision^c that is exempt from the provisions of Ch. 58.17 RCW. However, while exempt from platting, which requires a survey, a survey will probably be required by local ordinances for such subdivisions. If so, the underlying land would likely be surveyed to the standards required by statute and WAC regulations.^d

^a But, see “Survey Requirement for a CIC on a Short Plat” in §5.1.65.1.6

^b BUT see also “Survey Requirement for Cooperative” in §5.1.3 on page 33 with respect to a cooperative that was created without a survey.

^c See “Survey Requirement for CIC on “Large Lot” Subdivisions” in §5.1.7 on page 35

^d See “What is a survey and When is it Required?” in §5.1 on page 32



More importantly, any map for a miscellaneous community that is not a survey must still be certified by the declarant^a as to the information required by WUCIOA.¹⁰²

TITLE COMMENTS

TITLE COMMENT 1: Any request to insure a unit in a miscellaneous community where

1. the map is not a survey, or
 2. the land subjected to the declaration is not a “legal lot”
- should be reviewed by title company underwriting.

TITLE COMMENT 2: Any CIC created on a unit in another CIC, particularly a cooperative created on a unit in a condominium or another cooperative, should be referred to title company underwriting for review.

5.1.5 SURVEY REQUIRED FOR CIC ON BINDING SITE PLAN

The record of survey is required to be part of a binding site plan¹⁰³ created pursuant to Ch. 58.17 RCW which can be subjected to a CIC. Consequently, a CIC created on any portion of a binding site plan requires a survey of the underlying land. Requirements for individual CICs vary as discussed above.

5.1.6 SURVEY REQUIREMENT FOR A CIC ON A SHORT PLAT

Even though a short plat is not an exemption from Ch. 58.17 RCW, local subdivision ordinances need not require a survey for a short plat.¹⁰⁴

However, a short plat map that is not also a survey may not be sufficient to create lots that would otherwise be based on a “good and sufficient” legal description for title insurance purposes. In addition, as to subdivision issues, a lot in a short plat might not be considered a “legal lot” for title insurance purposes, notwithstanding that the short plat would presumably have been approved under local when it was recorded. (That is, a title company may be reluctant to issue a subdivision endorsement when insuring a lot – or a unit in a CIC that was created on a lot – in a short plat that was not surveyed.)

TITLE COMMENT

Most short plat ordinances likely require a survey, but if not, any CIC that is created on or within any part of a short plat that does not include a survey should be reviewed by title company underwriting.

5.1.7 SURVEY REQUIREMENT FOR CIC ON “LARGE LOT” SUBDIVISIONS

The record of survey might not be required by local ordinance for a so-called “large lot” subdivision that is otherwise exempt from Ch. 58.17 RCW¹⁰⁵, but most counties will likely require one by local ordinance.

However, while not expressly required by WUCIOA, a “large lot” map that is not also a survey may not be sufficient to create lots that would otherwise be based on a “good and sufficient” legal

^a See **SCHEDULE E** for sample certificate



description for title insurance purposes. In addition, as to subdivision issues, a lot in such a subdivision might not be considered a “legal lot” for title insurance purposes. (That is, a title company may be reluctant to issue a subdivision endorsement when insuring a lot – or a unit in a CIC that was created on a lot – in a large lot subdivision that was not surveyed.)

TITLE COMMENT

Local ordinances likely require a survey, but if not, any CIC that is created on or within any part of a so-called “large lot” subdivision that, even though exempt from Ch. 58.17 RCW,

1. was not surveyed, or
 2. that does not itself have a survey
- should be reviewed by title company underwriting.
-
-

5.2 EXCEPTION FOR WUCIOA SURVEY REQUIREMENT

The only explicit WUCIOA exception to the requirement for a survey for a CIC is for a cooperative.¹⁰⁶ As to a miscellaneous community, WUCIOA neither explicitly requires a survey, nor does it explicitly exempt the miscellaneous community from requiring a survey.^a

TITLE COMMENT

In most cases title insurers will want the to see a survey as the map prepared and recorded for all CICs.

This is in addition to wanting the underlying property being a “legal lot” created by survey. Any request to insure a CIC if the map is not a survey should be referred to title company underwriting.

5.3 SUMMARY OF MAP AND SURVEY REQUIREMENTS UNDER WUCIOA

With respect to each type of CIC, the following comments apply to the map requirement in WUCIOA:

1. As to a condominium, the map must be prepared in accordance with RCW 64.90.245¹⁰⁷ (including appropriate certifications) and must be a survey.¹⁰⁸
2. As to a plat community, the map must be a plat or short plat¹⁰⁹ as defined in RCW 58.17.020,¹¹⁰ (which can include a binding site plan¹¹¹) and the map
 - a. as to a plat must be (“accompanied by”) a survey,¹¹² and
 - b. as to a short plat, may be a survey (but if not, must contain the data – including appropriate certifications – required by RCW 64.90.245(14).¹¹³
 - c. as to a binding site plan, must be a survey (but if not, must contain the data – including appropriate certifications – required by RCW 64.90.245(14).¹¹⁴

^a See “Survey Requirement for Miscellaneous Community” in §5.1.4 on page 34



3. As to a cooperative the map must be prepared in accordance with RCW 64.90.245,¹¹⁵ and
 - a. may be a survey,¹¹⁶ or
 - b. may be a map complying with RCW 64.90.245, but certified by the declarant¹¹⁷ as to the same data required for a survey.
4. As to a miscellaneous community the map must be prepared in accordance with RCW 64.90.245,¹¹⁸ and
 - a. (a) may be a survey,¹¹⁹ or
 - b. (b) may be a map complying with RCW 64.90.245, but certified by the declarant¹²⁰ as to the same data required for a survey.

Again, WUCIOA does not, and is not intended to, revise, modify or otherwise impact any of the requirements of the State Subdivision Act nor any local ordinances adopted pursuant thereto, but rather requires compliance therewith by a CIC map, while only requiring additional information as outlined in RCW 64.90.245 on any survey.

6.0 PLATS AND PLAT COMMUNITIES

A plat community is a new concept in Washington State, introduced by WUCIOA. It does not involve a new type of subdivision, nor does WUCIOA change the way plats are created and approved. Rather, a plat community is a CIC created by the recordation of a declaration that accompanies or is included within a recorded plat approved under Ch. 58.17 RCW and local ordinances adopted pursuant thereto.^a

It is not up to the surveyor to determine if a subdivision plat requires a declaration that creates a CIC. However, if the surveyor is working on a project that looks like it would be a CIC, but the developer is not asking for the map data and certification required for CICs (and the declaration is not clearly WUCIOA compliant), it is recommended that the that the surveyor make inquiries of the developer or the developer’s counsel and document the answer.

Even an apparently minor comment on the face of the plat (for example: “each lot owner to share the cost of maintaining ____”) might trigger the requirement to comply with WUCIOA. While such information can be in a separate declaration, it is the obligation to share costs, and not where that obligation is stated, that triggers the application of WUCIOA to a plat.

TITLE COMMENT

Title company underwriting should be consulted for a determination as to whether a plat should be considered a CIC that is subject to WUCIOA.

6.1 NON-COMPLIANCE WITH WUCIOA – TITLE INSURABILITY

Note that a plat or plat community that is not in compliance with WUCIOA may not affect the title insurability of a unit/lot. However, lack of compliance could affect the ability or willingness of a title company to insure development rights or units created in the future pursuant to development rights. The title company may be reluctant to assume that a lot owner would not challenge the ability of the

^a See “Plat and Plat Community” in §2.7 on page 14



developer to add lots to the plat, for example, or assume that owners in an earlier division of a plat would not object to the imposition of obligations relating to a swimming pool added in a later division of that plat.

TITLE COMMENT

Title company underwriting should be consulted for a determination as to whether a plat community complies with WUCIOA. (See also “Role of Subdivision Approval Agency” in §4.2.1 above on page 25.)

6.2 LIMITED APPLICABILITY TO PLAT COMMUNITY

A plat community (e.g., platted lots subject to a declaration^a) that

1. is not subject to any development rights,^b AND
2. contains no more than twelve units, AND
3. provides in the declaration that average annual assessments for residential units are less than \$300 (to be adjusted for inflation), AND
4. that does not state that it is subject to all of WUCIOA

is only subject to three WUCIOA sections.¹²¹

This result is the default; as noted, the declaration can provide that all of WUCIOA applies.^c

TITLE COMMENT

Title company underwriting should be consulted for a determination as to whether a plat community is subject to all of WUCIOA.

7.0 MISCELLANEOUS COMMUNITIES

A miscellaneous community is a new concept in Washington State, introduced by WUCIOA. It does not create a new type of subdivision; rather it deals with the application of WUCIOA to parcels of land that are not otherwise part of a condominium, a cooperative or a plat community. This section discusses what might a miscellaneous community by default (because it is not expressly a condominium, cooperative or plat community), types of projects that might be intentionally developed as a miscellaneous community, compliance with WUCIOA and applicability of WUCIOA.

A CIC (that is, where a unit owner is obligation to pay common expenses) that creates units but that is not a plat community, condominium or cooperative is a miscellaneous community. However, the units must be “...lawfully created in a manner not inconsistent with Ch. 58.17 RCW.”¹²² Thus, a miscellaneous community can be created on the entirety of any legal lot or on multiple parcels, without requiring a separate plat, as long as that arrangement would not be in violation of Ch. 58.17 RCW.

^a See “Plat and Plat Community” in §2.7 on page 14

^b See “Development Rights” in §2.12 on page 19

^c See also “Small Projects” in §9.2 on page 44



A commercial mixed-use project, where separate CICs are created for each type of use might lend itself to this type of CIC. An example might include a single parcel that is to be developed with several buildings or portions of buildings dedicated to various uses such as commercial/retail, hotel use, office space residential condos, a parking garage, etc. A miscellaneous community could also be created as part of a boundary line adjustment affecting several existing legal lots and the creation of a common element parcel, such as a beach tract or community parcel with shared expenses, that would not otherwise be exempt.^a

7.1 NON-COMPLIANCE WITH WUCIOA – TITLE INSURABILITY

Note that a miscellaneous community that is not in compliance with WUCIOA may not affect the title insurability of a lot/unit. However, lack of compliance could affect the ability or willingness of a title company to insure development rights or units created in the future pursuant to development rights. The title company may be reluctant to assume that a lot owner would not challenge the ability of the developer to add lots to the plat, for example, or assume that owners in an earlier division of a plat would not object to the imposition of obligations relating to a swimming pool added in a later division of that plat.

Some uses might be construed as requiring a different type of CIC. For example, a purported miscellaneous community that consists solely of units that are side-by-side (such as is common with a row of adjacent townhomes), whether or not there are non-unit areas of real estate that are identified as common elements, could arguably be subject to review and approval pursuant to Ch. 58.17 RCW as a plat. (Note that this situation also might require certification of substantial completion.^b) Title insurability of a unit in such a CIC should be referred to title company underwriting.

Similarly, a purported miscellaneous community that includes only “stacked” units (such as a residential apartment building with individual units), particularly if there are common elements outside of the unit boundaries that are owned by the unit owners as tenants in common, could arguably be considered as qualifying only as a condominium under WUCIOA.

TITLE COMMENTS

COMMENT 1: If a CIC purports to be a miscellaneous community but has elements that are otherwise unique to either a plat community or a condominium, it should be reviewed by title company underwriting. Additionally, if a unit in a miscellaneous community is insured, the availability of affirmative coverage (generally offered by a policy endorsement) relating to (a) the policy exclusion for matters relating to subdivision, or (b) compliance with applicable WUCIOA statutes should be reviewed by underwriting counsel.

COMMENT 2: Title company underwriting should be consulted for a determination as to whether a miscellaneous community complies with WUCIOA or might be more properly identified as a condominium or plat community.

^a See “Exemptions to WUCIOA” in §9.0 on page 44 and NOTE 2 in “Miscellaneous Community” in §2.8 on page 15

^b See the discussion in “Recording – Unit Boundary Substantial Completion” in §13.1 on page 55



7.2 LIMITED APPLICABILITY TO MISCELLANEOUS COMMUNITY

A miscellaneous community that

1. is not subject to any development rights, AND
2. contains no more than twelve units, AND
3. provides in the declaration that average annual assessments for residential units are less than \$300 (to be adjusted for inflation), AND
4. that does not state that it is subject to all of WUCIOA

is only subject to three WUCIOA sections.¹²³

As noted, the declaration for what might otherwise be eligible for this exemption can provide that all of WUCIOA applies.^a

TITLE COMMENT

Title company underwriting should be consulted for a determination as to whether a miscellaneous community is subject to all of WUCIOA.

8.0 POST-WUCIOA PHASES ADDED TO PRE-WUCIOA PROJECTS

WUCIOA as adopted effective July 1, 2018, does not address those phased projects^b where units are added after July 1, 2018, to a CIC first recorded prior to that date (and thus, at that time, not subject to WUCIOA).

This issue was addressed in a corrective amendment in the 2019 legislative session.¹²⁴ Units that are added to a pre-existing non-WUCIOA development (arguably still a CIC^c) are exempt from WUCIOA, *but only if*

1. the original declaration *expressly* provided for that right, and
2. the amendment to the declaration and map adding units *expressly* subjects the units created by the additional phase to the pre-existing declaration pursuant to those originally reserved rights.

Assuming these two conditions are met, then none of the units in any phase would be subject to WUCIOA.

This presumes that the original declaration/CCRs provides for phasing and that future phases will be incorporated in and become part of the original CIC. Such provisions have typically been included in declarations for phased condominiums created under the WCA. The phasing process for pre-WUCIOA condominiums is well established and explicitly described in those declarations.

However, they may not be expressly included in pre-WUCIOA plat or miscellaneous community (typically a “large lot” subdivision exempt from platting requirements¹²⁵) CCRs. In addition, plat “divisions” typically involve new plats, even if the new lots are created on a “development lot” within

^a See also “Small Projects” in §9.2 on page 44

^b See “Development Rights” in §16.0 on page 63 for a discussion of phasing

^c See the definition in “Common Interest Community” in §2.1 on page 9



the original plat, and even if all lots in all divisions will be subject to one set of CCRs. So-called “phased plats” are discussed elsewhere in this material.^a

TITLE COMMENTS

COMMENT 1: Any phase, division or addition, however, denominated, added to a pre-WUCIOA CIC should be referred to title company underwriting to confirm applicability of and/or compliance with WUCIOA, and for a determination as to whether (a) a phase added after July 1, 2018, to any pre-WUCIOA CIC is subject to WUCIOA, and (b) whether the declaration and/or map of any pre-WUCIOA CIC would have to be amended to comply with WUCIOA if units are added by phasing after July 1, 2018.

COMMENT 2: The declarant can opt to apply WUCIOA to the new units. However, this may create an ambiguity as to whether any portion of WUCIOA would apply to those units in the pre-WUCIOA phase(s), particularly units/lots still owned by the declarant. Such situations should be referred to title company underwriting.

8.1 CONDOMINIUM PHASES RECORDED BEFORE AND AFTER JULY 1, 2018

Condominiums declarations created under the WCA before July 1, 2018, generally contain express phasing provisions as a reserved development right.

If:

1. the original declaration expressly provided for phasing by adding units, whether (1) within the common elements, (2) on land added to the project or (3) by subdividing a unit (if by the declarant, as a development right^b), AND
2. the phasing amendment expressly states that units are being added pursuant to those development rights, THEN

the added units would not be subject to WUCIOA.¹²⁶

Note that it is likely that the above conditions would be met, since (1) provisions for phasing as a reserved development right are typically included in pre-WUCIOA declarations, and (2) such development rights are typically referenced in the phasing amendment.

TITLE COMMENTS

COMMENT 1: Nonetheless, title company underwriting should be consulted in all condominium phasing situations, for a determination as to whether units in any subsequent phase of a pre-July 1, 2018, condominium should be treated as subject to any of the provisions of WUCIOA.

COMMENT 2: Title company underwriting should be consulted in all condominium phasing situations, for a determination as to whether units in any subsequent phase of

^a See “Plat Divisions recorded Before and after July 1, 2018” in §8.3 on page 42 for further discussion of “phased” plats

^b See “Development Rights” in §16.0 on page 63



a pre-July 1, 2018, condominium should be treated as subject to any provisions of WUCIOA.

See elsewhere in this material^a for additional discussion of condominiums and binding site plans.

A possible alternative approach to post-WUCIOA phasing that might be applied to condominiums is discussed elsewhere in this material.^b

8.2 COOPERATIVES

This issue likely would not apply to cooperatives, since any pre-WUCIOA cooperative would not typically provide for additional phases. Any cooperative recorded after that date will be subject to WUCIOA.

TITLE COMMENT

However, title company underwriting should be consulted if additional units are added after July 1, 2018, to a cooperative that was created before that date.

8.3 PLAT DIVISIONS RECORDED BEFORE AND AFTER JULY 1, 2018

As noted in elsewhere in this material,^c under WUCIOA there will be no changes in the way a plat is prepared and recorded. However, if land within a plat is also a CIC it will be a plat community and must include WUCIOA data and WUCIOA certifications. The plat itself must be recorded concurrently with the declaration, with a cross reference to the recorded declaration.¹²⁷

CCRs for plat and plat divisions generally do not contain express phasing rights equivalent to those found in condominium declarations. However, there may be provisions (for example) disclosing that additional lots, albeit included in a plat recorded as a separate plat division, will be part of the CIC.

If:

1. the original CCRs/declaration expressly provided for adding lots/units, AND
2. the CCRs/declaration amendment expressly states that the units are being added pursuant to those development rights, THEN

the added units would not be subject to WUCIOA.

However, plat divisions are typically not added pursuant to the type of development right provisions common to condominium projects. Note that the likelihood that (1) CCRs for a pre-WUCIOA plat including express provisions for phasing as a reserved development right, and (2) such development rights being referenced in a phasing amendment is small.

^a See “Binding Site Plan” in §2.17 on page 21 and “Subdivision Compliance by CIC” in §4.2 on page 23

^b See “Use of Master Association” in §8.5 on page 43 for a possible alternative approach to post-WUCIOA phasing that might be applied to condominiums

^c See also “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31 & “Summary of Map and Survey Requirements under WUCIOA” in §5.3 on page 36



Thus, if either of the following apply, then the presumption is that any plat (even if called a phase or division added to an existing pre-WUCIOA plat) recorded after July 1, 2018, will be subject to WUCIOA:

1. The original CCRs do not contain express provisions for expanding the subdivision, no matter what the second set of CCRs say about adding divisions.
2. The original CCRs contain provisions for adding land and lots/units to the subdivision, but the amended CCRs do not expressly stipulate that the lots/units are added pursuant to those provisions.

TITLE COMMENTS

COMMENT 1: Title company underwriting should be consulted in all plat phasing situations, for a determination as to whether units in any subsequent phase of a pre-July 1, 2018, plat should be treated as subject to any of the provisions of WUCIOA.

COMMENT 2: A possible alternative approach to post-WUCIOA phasing that might be applied to divisions in plat is discussed elsewhere in this material.^a

8.4 MISCELLANEOUS COMMUNITIES

This issue likely would not apply to miscellaneous communities, since that type of CIC did not exist prior to July 1, 2018. Thus, there are no pre-WUCIOA miscellaneous communities that will have additional phases added after July 1, 2018. Any new miscellaneous community recorded after that date will be subject to WUCIOA.

TITLE COMMENT

Any miscellaneous community that purports to be a phase to a pre-WUCIOA miscellaneous community (and thus purportedly exempt from WUCIOA) should be reviewed by title company underwriting.

As noted elsewhere in this material^b the definition of a CIC is not based on whether or not there are common elements (homeowner or association owned features such as common park tracts, roadways, drainage parcels, wells, etc.), but rather whether there are obligations to share costs (maintenance, taxes, or other expenses) for any property other than the unit owner's unit.^c

8.5 USE OF MASTER ASSOCIATION

One possible approach to these phasing issues for units added to a pre-WUCIOA project is the use of a master association¹²⁸ tying separate projects together.

Thus, the CCRs for a plat division could mirror the CCRs for the first plat, but with the addition of WUCIOA requirements, making it a plat community. Then, a master association could be created that

^a See "Use of Master Association" in §8.5 on page 43 for a possible alternative approach to post-WUCIOA phasing that might be applied to divisions in plat

^b See "Common Interest Community" in §2.1 on page 9

^c See the definition of CIC in "Common Interest Community" in §2.1 on page 9.



ties the separate projects together. In that situation, a title company would probably show an exception for the relevant declaration/CCR document for when insuring lots in each plat, but also except from coverage the master association declaration.

9.0 EXEMPTIONS TO WUCIOA

There are some full or partial exemptions from the provisions of WUCOA. In general, a claim of exemption under any of these provisions should be referred to title company underwriting.

9.1 VOLUNTARY EASEMENTS & COVENANTS

An easement or covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community.¹²⁹ Even though the obligations bind successive owners (once the mutual and voluntary agreement has been entered into) the owners do not have to comply with WUCIOA.

Some likely examples:

1. Two adjoining residential lots in an established residential neighborhood sharing a driveway.
2. A well located on a rural parcel benefitting both that parcel and an adjoining parcel, where both lots share maintenance costs.
3. A multiple lot subdivision, where some lots share access over and maintenance costs for a common driveway located on a common area tract, owned by the owners association, between the respective lots. There are no other common expense obligations imposed on the lot owners.
4. A short plat with 4 lots, which contains on its face provisions for a common access tract owned by each owner in undivided interests as tenants in common (alternatively, the access tract is an easement area encumbering one lot) and obligating each lot owner to share 25% of the maintenance costs. There are no other common expense obligations.

TITLE COMMENT

Any question of whether such an arrangement is exempt from WUCIOA should be referred to title company underwriting.

9.2 SMALL PROJECTS

A plat community or miscellaneous community that

- a. is not subject to any development rights, AND
- b. contains no more than twelve units, AND
- c. provides in the declaration that average annual assessments for residential units are less than \$300 (to be adjusted for inflation, and subject to good faith on the part of the declarant¹³⁰)



is only subject to three WUCIOA sections.^a

This is the default. However, the declaration can provide that all of WUCIOA applies.¹³¹ As a practical matter it would be helpful if the exemption was expressly addressed in the declaration to avoid ambiguity.

9.3 NON-RESIDENTIAL – CONDOMINIUM

A condominium where all units are restricted to non-residential uses is exempt from some disclosure provisions.¹³²

For title insurance purposes all condominiums are subject to WUCIOA.

9.4 NON-RESIDENTIAL – OTHER CICS

A CIC (other than a condominium) in which all units are restricted to non-residential uses is, by default, not subject to WUCIOA *unless* the declaration so provides.¹³³ As with small projects,^b as a practical matter it would be helpful if the exemption was expressly addressed in the declaration to avoid ambiguity.

There are three categories of optional applicability:

1. All of WUCIOA.
2. Only RCW 64.90.010 through 64.90.325 (essentially, all of WUCIOA except those sections pertaining to the management of the association and purchaser protections).
3. Three sections:
 - a. RCW 64.90.020 (separate titles and taxation). Note that these elements are already common to plats. They are not significant for title insurance review purposes.
 - b. RCW 64.90.025 (applicability of local ordinances, regulations, and building codes). Again, these elements are not generally significant for title insurance review purposes.
 - c. RCW 64.90.030 (eminent domain). Again, this issue not generally significant for title insurance review purposes.

TITLE COMMENT

If a plat community, miscellaneous community or cooperative is entirely non-residential, the declaration should be reviewed to determine if WUCIOA applies, and if so, to what extent. The question should be referred to title company underwriting.

^a RCW 64.90.020 (separate titles and taxation), RCW 64.90.025 (applicability of local ordinances, regulations, and building codes) & RCW 64.90.030 (eminent domain). These generally do not impact title insurance. See also “Limited Applicability to Plat Community” in §6.2 on page 38 and “Limited Applicability to Miscellaneous Community” in §7.2 on page 40.

^b See “Small Projects” in §9.2 on page 44



9.5 MIXED USE PROJECTS

Any CIC that includes both non-residential units and units *that may be used* for residential purposes might not be subject to WUCIOA.

However, if the units *that may be* used for residential purposes would otherwise constitute a CIC, then WUCIOA applies.¹³⁴

TITLE COMMENT

For title insurance purposes, a mixed-use CIC (including plat communities, miscellaneous communities and cooperatives) should be considered subject to WUCIOA. The matter should be referred to title company underwriting if there is any question about a claimed exemption from WUCIOA.

10.0 ACCESS

For title insurance purposes, there must be actual physical access between each unit and a public right of way.

TITLE COMMENT

The declaration should expressly provide for such access; if not, the matter should be referred to title company underwriting.

Access to all units/lots in a plat community will likely be required by the plat approval process. Access for other types of CICs should be confirmed.

10.1 ACCESS TO INDIVIDUAL UNITS

Access to individual units can be shown on the map to the extent necessary to confirm either direct access to a public right of way, or access to and across easements (which might be the case with plat community units/lots) or a common element parcel (which in this instance might also be designated as LCE and allocated to specific units).

It would also apply to units contained in or comprised of a building: doorways, steps, stairways, hallways, elevator shafts, individual walkways and driveways, etc.

If any unit does not have access, it should be noted on the map.¹³⁵ The title company should consult with underwriting if there is any question of access to individual units.

10.2 ACCESS TO THE CIC

The CIC must abut a public right of way or have direct physical access to a public right of way over a title insurable easement appurtenant.¹³⁶ The surveyor should disclose a lack of access, or any impediment to a right to access a public right of way, to the declarant and title company.



Easements benefiting and burdening the CIC land must be shown on the map.¹³⁷ Related issues are discussed elsewhere in this material.^a

11.0 NEW ROAD DEDICATIONS & EASEMENTS

Prior to certifying the map, the surveyor should inquire as to any intended actions by the declarant that would change the legal description or use of the CIC land. Such actions may be intended to occur contemporaneous with the CIC development, but might not necessarily be reflected in the legal description of the CIC land (if intended to be appurtenant) nor shown in the map (whether appurtenant or encumbering) when it is recorded.

Such actions can include:

1. Dedication or conveyance of public rights of way adjoining or running through the land. In particular with condominiums and cooperatives, the intended creation of roads might require a revision of the legal description if the dedication or conveyance would result in a reduction in the size of the CIC when it is created.

For a condominium or cooperative, such dedication would occur independently of and preferably prior to the recordation of the declaration and map. In any event, those CIC governing documents would exclude the dedicated right of way, even if the condominium or cooperative is recorded prior to the completion of the right of way dedication.

TITLE COMMENTS

COMMENT 1: The title company should be consulted if the right of way is not intended to be created at the time the CIC is recorded. It will be necessary to address title insurance issues such the legal description to be used in the declaration and map, as well as insurable access.

COMMENT 2: If a road dedication or deed is not possible prior to the recordation of a condominium CIC, see elsewhere in this material for a discussion of how the eventual conveyance must be handled.^b

In a plat community, road dedications would be part of the platting approval process.

Note that with condominiums and cooperatives interior roads are not “dedicated” to public use in the map, as is common with plat communities. Such roads would be shown on the map, but would be part of the common elements.

2. Grants of easements benefitting other land and encumbering the CIC land, even it related to future phase land owned by the declarant.
3. Reservation of easements over adjoining land, particularly owned by the declarant, that will benefit and be appurtenant to the CIC land. This may be the case with phase development.

^a See also “New Road Dedications & Easements” in §11.0. See also “Recorded Easements” in §17.8.12 on page 80 and “Unrecorded Easements” in §17.8.13 on page 81

^b “Conveyance/Encumbrance of Common Elements – Condominium” in §4.6.1 on page 29



The surveyor, title company, declarant and the declarant’s attorney should all be aware of such intended actions and resolve any issues relating map requirements and title insurance requirements.

11.1 DEDICATIONS FOR PUBLIC PURPOSES

The declarant’s declaration for a CIC *that is not a plat community* is not for any public purposes, since the creation of a condominium, cooperative or miscellaneous community does not involve dedication of any public right of way. Interior roads and driveways are part of the common elements; they are not public.

TITLE COMMENT

If any part of the CIC project (other than a plat community) is to be dedicated for public use, that should be done prior to the recordation of the CIC governing documents (and the legal description of the CIC land would not include it). If there is a delay in that process, the legal description in the declaration and map should probably still exclude that land.

If that is not done, any land within the common elements of a condominium, cooperative or miscellaneous community (after the declaration and map are recorded) that is to be conveyed or dedicated for a public right of way would first have to be conveyed pursuant to RCW 64.90.415 or condemned pursuant to RCW 64.90.030, and then withdrawn from the CIC by proper amendment to both the declaration and the map.

11.2 APPURTENANT EASEMENTS

An interior roadway within a condominium, cooperative or miscellaneous community is not an easement appurtenant to the property or to the units in the CIC. In a condominium or cooperative it would be a portion of the common elements. In a miscellaneous community it could be a common element tract – that is, not a unit/lot for conveyance to a purchaser, but rather to be owned by the unit owners as tenants in common or to be conveyed to the owners association.^a

However, an interior roadway in such projects might be an easement appurtenant to other CICs in a larger master development, or appurtenant to future phase land if the current phase lies between a public road and the future phase land.

It would be appropriate to (a) state in the declaration (and delineate and label on the map) such property as encumbered by an easement for the benefit of the identified land that is not yet part of the CIC (or that will not be incorporated into the CIC), and (b) reference that easement as being appurtenant to the other land when conveying or encumbering it.

TITLE COMMENT

The title company should consult with underwriting as to the sufficiency of such a reservation or grant for insurability of the easement.

^a See “Limited Common Elements” in §14.0 on page 58



And, if the benefitted land is incorporated into a condominium or cooperative by a phase amendment, the easement would merge into the title of the owners (or cooperative corporation, if applicable) and the roadways would become part of the common elements of the larger project.

12.0 UNIT BOUNDARIES

WUCIOA provides flexibility with respect to unit boundaries. However, it should be noted that WUCIOA provisions tend to focus on boundaries that would be applicable to units in a building (often typical of condominiums and cooperatives), and not on boundaries that would be typical for a plat community or miscellaneous community. Lots in a plat typically would have only vertical (side) boundaries, and the upper and lower boundaries would be “from the center of the earth to the heavens above.”^a Because WUCIOA requires boundaries to be defined in the declaration if they are NOT the default boundaries for all CICs (see item #1 following), this must now be stated in the declaration/CCR for plat communities, and not just for condominiums, cooperatives and miscellaneous communities.

Unit boundaries are, or can be:

1. As to a plat community, the boundaries are as shown on the plat as recorded pursuant to Ch. 58.17 RCW.¹³⁸ These boundaries are typically only vertical, “from the center of the earth to the heavens above” and running through the lot lines shown on the map. However, the plat map can describe and delineate horizontal boundaries for any lot, and can provide that a boundary is based on physical monumentation such as a party wall that separates townhome style construction.¹³⁹
2. As to a miscellaneous community, the boundaries are the same as for a plat community, because a miscellaneous community can only be created in a manner not inconsistent with a Ch. 58.17 RCW.¹⁴⁰ They can also be defined differently.¹⁴¹
3. As to condominiums and cooperatives, the *statutory default*, which is the interior *unfinished* surfaces^b of physically constructed walls, floors and ceilings. This is typical of an existing multi-floor building containing multiple units.

The declaration may also state this if it applies, but if it is silent, then this is the default unit boundary.¹⁴²

4. Determined by the physical location of any type of improvement, such as, for example, (a) connected townhouses where only vertical boundaries, defined by the exterior surfaces of the two abutting party walls, are what separates units (this might be the case in a plat community or a miscellaneous community), (b) separate single-family structures, where the exterior of the building is the unit boundary, or (c) a multistory building, where one or more entire floors comprise one unit and the horizontal boundary between units is a plane in the space between the floor and ceiling and the vertical boundaries are the exterior surfaces of the building.

^a See also “Units Without Physical Boundaries” in §12.2 on page 52

^b RCW 64.90.210(1)(a): “If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.” RCW 64.90.225(1)(d): the declaration must state “...a description of the boundaries of each unit *if and to the extent they are different from the boundaries* stated in RCW 64.90.210(1)(a).”



The vertical boundary between two side-by-side units in plat community, a miscellaneous community or in a “traditional” multi-floor building, could be a plane in space that is located at the center of a common wall or a plane that lies in the gap separating the units. This is especially practical if the type of construction has two adjoining walls that are separated by a gap, and might also be utilized in townhouse type of construction. In that case, the entirety of each wall could lie within the unit boundaries.

This approach could also apply to the horizontal boundaries between units. That is, the boundary could be a plane in space that lies halfway between the floor of the upper unit and the ceiling of the lower unit, or a gap between the floor and ceiling. Again, in this situation, the entirety of the floor of the upper unit would be contained in that unit, and the entirety of the ceiling of the lower unit would be contained in that unit.

TITLE COMMENT

This type of boundary may be easier and less expensive to survey. However, it would not be the default boundary (interior surfaces of walls for each unit) and must be described in the declaration.

This situation is also not the air space boundary situation as described elsewhere in this material.^a In that context, “substantial completion” requirements^b are still applicable for this situation.

5. So-called “planes in space” that do not tie to any physical monument.

TITLE COMMENT

This is a typical boundary for a plat subdivision created pursuant to Ch. 58.17 RCW, and likely also for a miscellaneous community, but it can be utilized for any type of CIC.

Units in condominiums and cooperatives (and perhaps miscellaneous communities) that have these characteristics are commonly referred to as “airspace” units.^c They would be typical for plat communities as well, but platted lots would not typically be perceived as “airspace” units.

NOTE: It may be advisable to have the boundaries of an airspace unit, particularly the horizontal (upper and lower) boundaries, of an airspace unit located so as to encompass the entirety of a contemplated improvement. Examples might include:

- a. the foundation and roof antennae of a building, but not the space below the foundation or the space above the highest point of the structure,
- b. the draft and mast of a boat to be located in a moorage unit,
- c. the entirety of a building such as a single-family home,

^a See “Units Without Physical Boundaries” in §12.2 on page 52

^b See “Substantial Completion” in §13.0 on page 54

^c See “Units Without Physical Boundaries” in §12.2



- d. the entirety of a multi-unit building that will itself be another CIC.
6. Boundaries can be a combination of any of the above examples, where some of the boundaries are planes in space (including the space between exterior walls of two adjoining units) and others the interior or exterior surface of a wall, floor or ceiling, some other part of a building structure, or another physical monument. Another example might be a parking space, where the lower elevation is the surface of the ground, and the side and upper boundaries are planes in space.

All boundaries, whether based on physical monumentation or planes in space, are to be (a) described in the declaration¹⁴³ (except to the extent that the declarant elects to opt for the default boundaries^a) and (b) shown, as to both *location* and *dimensions*, on the map¹⁴⁴ (even if the default boundaries are used).

The surveyor's certification will also distinguish such boundaries. See SCHEDULE A and SCHEDULE B for suggested language.

Refer to "Vertical Unit Boundaries" in §17.8.18 below on page 83 and "Horizontal Unit Boundaries" in §17.8.19 below on page 84 for how that information can be reflected on the map.

12.1 UNITS WITH PHYSICAL BOUNDARIES

If unit boundaries are based on physical monuments, the units must be substantially completed in accordance with the map at the time of recording.^b

This includes units with a boundary that is a plane in space located between the walls of adjoining units or between the ceiling of one unit and the floor of another unit, as described elsewhere in this material.^c

So-called "shell" units (e.g., where walls are up, but the space is essentially unfinished) may be created. In such cases, however, the unit boundaries must physically exist before the declaration and map are recorded, even if interior spaces or surfaces are unfinished. Recording is not dependent on availability for occupancy.^d

However, an uncompleted unit may not be conveyed, except under limited circumstances.¹⁴⁵ These include:

1. A conveyance of all of the units in a common interest community in a single transaction;
2. A conveyance to other than a purchaser;^e

^a The default for unit boundaries (that is, unless the declaration specifies otherwise) are the "traditional" boundaries of walls, floors, ceilings, doors and windows. RCW 64.90.210(1)(a) & RCW64.90.210(1)(d)

^b See "Substantial Completion" in §13.0 on page 54

^c See "Unit Boundaries" in §12.0 on page 49

^d See "Recording – Unit Boundary Substantial Completion" in §13.1 on page 55

^e A purchaser is defined as "...a person, other than a declarant or a dealer, which by means of a voluntary transfer acquires a legal or equitable interest in a unit other than as security for an obligation." RCW 64.90.010(39). A dealer is defined as "...a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a common

3. An agreement to convey that may be canceled at any time and for any reason by the purchaser without penalty;
4. A conveyance of a unit restricted to nonresidential uses, except and to the extent otherwise agreed to in writing by the seller and purchaser of that unit.

12.2 UNITS WITHOUT PHYSICAL BOUNDARIES

Units without physical boundaries are typical of a plat community and miscellaneous community, but are permitted for all CICs. As noted above^a lots in a plat typically would have only vertical (side) boundaries, and the upper and lower boundaries would be “from the center of the earth to the heavens above.” This does not have to be stated in the declaration for a plat community or miscellaneous community.

With respect to condominiums, cooperatives, units with boundaries that are not based on physical monumentation are sometimes referred to as “airspace” units. These are units within which can be placed boats, houseboats, automobiles (parking spaces), mobile homes, aircraft, etc. Some of the boundaries may be physically monumented, such as the surface of a concrete slab or the sides of a pier for moorage slips, but more often they are a plane in space.

It is also possible for existing improvements, such as a single family detached dwelling or an entire multi-unit building to be included within the boundaries of an airspace unit.

Another example is a portion of the land that might be set aside for future construction of a building (either a single detached unit or a multi-unit building). In this case the development right to add units would not apply to a part of the common element land. Rather, the declarant would reserve the development right to subdivide the airspace unit into several units once the improvement is built.^b

Yet another example would be a parking space or boar moorage slip that might otherwise be designated as LCE.

Also, a unit (a parking space, for example) can have some boundaries that are based on physical monumentation (in this example, the ground level) and some that are airspace (the sides and upper elevation). The surveyor’s certification will also distinguish such boundaries. See SCHEDULE A and SCHEDULE B for suggested language.

Units in a plat community and a miscellaneous community typically would not have horizontal (upper and lower) boundaries, but to the extent there are such boundaries they would be delineated or otherwise identified on the map.¹⁴⁶

TITLE COMMENT

For all CICs, even though there might not be physical walls or other structures surrounding or defining airspace unit boundaries, all boundaries must still be delineated on the map. They must be tied to property corners (for the vertical, or side

interest community or fifty percent or more of the units in a common interest community containing more than two units.” RCW 64.90.010(39). Thus, a bulk sale of multiple unfinished units could be done.

^a See “Unit Boundaries” in §12.0 on page 49.

^b See also “Phasing – Subdividing Units” in §16.5 on page 67



boundaries) and to a fixed elevation bench mark (for horizontal, or upper and lower, boundaries).

In these cases, the surveyor will *not* certify the airspace units as substantially complete, but must still, however, certify as to the correctness of the boundaries shown. The statutory form is shown on SCHEDULE A, which also incorporates the certification required by the Survey Recording Act.¹⁴⁷

12.3 UNIT STRUCTURES

Note that, as to a condominium or cooperative, there may or may not be an improvement within an airspace unit at the time the map is recorded with the declaration. The declaration will usually describe the type of improvements that may be placed within the unit (whether a boat, mobile home or single family detached home, for example) and will often define a fixed improvement such as a house as a “*unit structure*” or similar term.

Unit structures that are within the boundaries of an airspace unit when the condominium or cooperative is recorded should be located vis-à-vis the unit boundary on the map.¹⁴⁸ This is especially important if there are any encroachments of the improvements onto the common elements. However, the unit structure dimensions, number of rooms and area are not required to be reflected on the map, even if that information is to be in the declaration.

TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration.

Whether the declaration and map will need to be amended in the future as **unit structures** are erected is a matter that will be addressed in the declaration.

12.4 MANUFACTURED HOMES AND HOUSEBOATS

In general, and irrespective of the application of WUCIOA to real property, a manufactured home (which term includes a mobile home) is not “Land” as defined in the American Land Title Association (ALTA) title insurance policy.¹⁴⁹ As such, it would typically not be included in the policy’s legal description of the land on which it is located, and the policy amount will be reduced to exclude its value. However, it may become real property (in context of the definition of “Land” in that policy) pursuant to Ch. 65.20 RCW, and if so, a unit on which a manufacture home in a CIC might be insured as follows:

1. without excepting the manufactured home from the legal description,
2. including its value in the policy amount, and
3. including one of the ALTA 7-06 series endorsements on the policy.

The statute contemplates that the declaration can permit the elimination of title to a manufactured home, and if it does, also expressly provides that the mobile home is part of the unit and that no other unit owner or the association has any interest in it.¹⁵⁰



Similarly, a houseboat would not necessarily be “Land” as defined in that ALTA title insurance policy but may become a fixture on that land under certain circumstances, and if so, a unit in a CIC might be insured as follows:

1. without excepting the houseboat from the legal description, and
2. including the value of the houseboat in the policy amount.

TITLE COMMENT

Any request to insure title to and/or the value of a houseboat should be referred to the title company underwriting.

As to CICs, a manufactured home or houseboat may be intended to be placed within the airspace that defines a CIC unit. Since these improvements may become part of the unit in a CIC, as well as included in the title policy definition of “Land”, and because of the increased value of the unit, a discussion is included here.

As to the CIC map, it would not be necessary to show the location of a manufactured home or houseboat within unit boundaries as depicted on the map, whether or not it has lost its status as a manufactured home or personal property, except to the extent that it (a) encroaches outside of the unit/lot boundary, onto either another unit/lot or common elements, or (b) falls into the category of “other matters customarily shown on surveys.”¹⁵¹ This is particularly true for a plat community and a miscellaneous community.^a

TITLE COMMENT

Compliance with WUCIOA will not be the sole determining factor in insurability of manufactured homes or houseboats. Each title insurance underwriter will apply its guidelines for such insurance in conjunction with compliance with WUCIOA.

13.0 SUBSTANTIAL COMPLETION

The term “substantial completion” (and the HPR and WCA statutory term “as built”) can be confusing in context of WUCIOA, and is discussed here for clarification.

TITLE COMMENT

In all cases, a unit cannot be conveyed until both the declaration and the map are recorded, whether or not there are any improvements on or in a unit.¹⁵²

Completion as to all CICs has two components.

1. The first component applies to the surveyor (or, optionally, the declarant, if it is a cooperative) with respect to the *boundaries of the units* that are shown on the map. This is tied to the *ability to record*

^a See also “Improvements within Airspace Units” in §17.8.8 on page 78



the declaration and map.¹⁵³ All CIC boundaries have to be located on the map. Additionally, *if they are defined by walls, floors and ceilings* those boundaries must substantially completed.^a

For a plat community or miscellaneous community, this completion is required, but as practical matter, completion does not relate to unit boundaries for most plat communities and miscellaneous communities, *unless* a boundary is defined by physical monumentation. This would be an unusual situation and should be referred to title company underwriting.

2. The second component relates to the declarant as to *availability of occupancy* with respect to the *ability to convey* a unit, and is applicable only if a POS is required.¹⁵⁴ Thus, in this context, completion to the level of occupancy^b may not be needed if a POS is not required.^c

In some situations, the map can be prepared in draft format for inclusion with a POS in advance of recording, in which case the certifications relating to boundaries would not be signed until it is recorded.^d

13.1 RECORDING – UNIT BOUNDARY SUBSTANTIAL COMPLETION

Before the declaration and map for any CIC can be recorded, the map must be certified^e as to all unit boundaries.¹⁵⁵

The map for a condominium, miscellaneous community or plat *must* be a survey prepared and certified by a licensed land surveyor.¹⁵⁶

The map for a cooperative *may* be a survey, and if so, must also be prepared and certified by a licensed land surveyor.¹⁵⁷ Alternatively for a cooperative, the declarant has the option to provide a non-survey map. In the latter case, the declarant would make the certification as to boundaries, which can be in the declaration and not on a separately recorded map.¹⁵⁸

TITLE COMMENT

Note that the requirement for, and the language of, the ***certification relating to boundaries is the same*** whether it is provided by the surveyor or by the declarant.

As to all maps:

1. For any unit with airspace boundaries,^f the surveyor (or, optionally for a cooperative, the declarant) must certify them as being located as shown on the map.

^a See “Recording – Unit Boundary Substantial Completion” in §13.1 on page 55 and “Units With Physical Boundaries” in §12.1 on page 51

^b See “Conveyance – Unit Substantial Completion” in §13.2 on page 57

^c See RCW 64.90.600 for a list of exemptions from POS requirements.

^d See “Draft Map” in §17.1 on page 68

^e For a plat community, this can be in the declaration.

^f See “Units Without Physical Boundaries” in §12.2 on page 52



This would likely be the norm for, but not exclusive to, a plat community and a miscellaneous community map. But it could apply to a condominium or cooperative where the units have airspace boundaries, that is, where units are not located in a building either contains or comprises that unit.

2. For any unit with boundaries based on physical monuments, including *but not limited to* walls, floors and ceilings, the surveyor (or, optionally for a cooperative, the declarant) must certify that the unit boundaries are substantially complete.¹⁵⁹

This would be typical of, but not exclusive to, a condominium or cooperative where the units are located in a building that either contains or comprises that unit.

TITLE COMMENT

In all CICs the unit boundaries are located and fixed by the recording of the declaration and map.

The surveyor must be cognizant of the intent of the declarant as to whether the units are to have physical monumented boundaries or airspace boundaries, and the declaration, map and POS must be consistent.

If the intent is to have physically monumented boundaries, the surveyor will be certifying those boundaries as substantially complete (except, optionally for a cooperative, the declarant elects to forego a survey, in which case the declarant will be making that certification).

Note that the WUCIOA form of single certification for the surveyor^a (or, optionally, the declarant for some cooperatives^b) is applicable for all CIC maps (including plats), and need not be modified based on the nature of unit boundaries.

Also, to the extent that a CIC has some units with physical boundaries and some with airspace boundaries, the certifications need not be modified (because the suggested certification language applies to both types), but it may need to include additional clarifying language to identify the units to which each certification applies.

TITLE COMMENT

Thus, ***both the declaration and the map must identify those units*** that have each type of boundary. The declaration will define boundaries that are applicable to units, and if they differ among units, should additionally include a statement to that effect. An example:

“(a) As to Unit(s) _____, the horizontal and vertical boundaries of are determined by the walls, floors and ceilings thereof. (b) As to Unit(s) _____, the horizontal and vertical boundaries of are not determined by physical boundaries. [Add, if applicable: (c) As to Unit(s) _____, some of the horizontal and vertical boundaries are determined by the walls, floors and ceilings thereof, and some of the horizontal and vertical boundaries are not determined by physical boundaries.]”

^a See **SCHEDULE A** for new projects and **SCHEDULE B** for phase amendments adding units.

^b See **SCHEDULE C** for new projects and **SCHEDULE D** for phase amendments adding units.



If option (c) is included, the statement should identify which *specific* boundaries are so defined.

The map should also contain a similar statement (see SCHEDULE A, SCHEDULE B and SCHEDULE E). Using this approach will avoid the need to amend the actual certification language.

13.2 CONVEYANCE – UNIT SUBSTANTIAL COMPLETION

Although not relevant to the requirements for a map, the following is included for clarification of “completion.” Once the declaration and map for a condominium or cooperative is recorded^a units can be conveyed^b under the following circumstances:

1. If no POS is required, the unit may be conveyed.^c
2. If a POS is required, as to an airspace unit that includes a building that contains multiple spaces that are not themselves units, the unit may be conveyed. An example of this would be an apartment building containing residential apartments that will be leased or rented but will not constitute units that will be sold.
3. If a POS is required, as to an airspace unit that does not include a building, the unit may be conveyed. Examples of this latter category include units for moorage slips, parking spaces, and airplane hangar spaces (where such spaces are not LCE).
4. If a POS is required, as to an airspace unit containing a “unit structure,” or similar improvement (no part of which constitutes a unit boundary), the existence of such would not appear to impact whether the unit can be conveyed, but should be referred to title company underwriting.
5. If a POS is required,
 - a. as to a unit (a) in a building *containing that unit* or (b) in a building *comprising that unit*, the unit may be conveyed only if substantially completed and available for occupancy, and all structural components and mechanical systems of the building containing or comprising that unit must be substantially completed, unless
 - b. as to such units, unit may be conveyed only if the declarant (or dealer as defined in WUCIOA¹⁶⁰) and a purchaser have specifically agreed in writing as to the extent to which the unit will not be substantially completed and available and to which any structural components and mechanical systems will not be substantially completed at the time of conveyance.

A building “containing that unit” generally could be considered applicable to, for example, a traditional multistory building with stacked units, or a row of townhouses where portions of the building structure are unit boundaries.

An example of a building that “comprises” that unit, an example might be a detached single-family home where the entire building constitutes the unit, and none of the “yard” space surrounding it is part

^a See “Recording – Unit Boundary Substantial Completion” in §13.1 on page 55

^b A contract for sale (purchase and sale agreement) can be executed.

^c If an POS is not being provided for a new project that would appear to require one, the title company should consult with underwriting.



of the unit. Another example might be a unit in a miscellaneous community or condominium that where multiple floors of a building constitute one unit (such as a hotel) and multiple floors contain another unit for commercial or office use.

As noted, these conveyance requirements are not related to whether or not the declaration and map can be recorded.

TITLE COMMENT

Thus, a title company will want to confirm that a unit to be insured can be conveyed and should consult with title company underwriting if there is any question about whether an airspace unit that contains any type of building is subject to this statutory provision.

14.0 LIMITED COMMON ELEMENTS

The declaration will state which portions of the common elements are allocated as LCE. In a condominium or cooperative these may include decks, patios, driveways, open or covered parking spaces, garages, yard areas, stairs or hallways.

TITLE COMMENT

Care should be taken that areas that are commonly designated as LCE are not intended to be units.^a

In a plat community or miscellaneous community, an LCE might involve an access tract or well site that might serve some, but not all, units/lots.

TITLE COMMENT

The concept of LCE in connection with a platted subdivision pursuant to Ch. 58.17 RCW is new. It will be necessary to further identify common tracts in a plat community or miscellaneous community as common elements, and further identify those common elements that will be used by fewer than all units/lots as LCE.

All LCE allocations are to be made in the declaration; the map does not make or recite the allocations, but only identifies and shows the location of specific LCE.

TITLE COMMENT

All LCE must be allocated (assigned) to one or more units.^b

Major LCE must be shown as noted below.

For purposes of preparing a map, types of LCE include:

^a See definitions “Unit” in §2.9 on page 16 and “Limited Common Elements” in §2.11 on page 18, and “Units Without Physical Boundaries” in §12.2 on page 52

^b See also “Future LCE Allocations” in §14.2 on page 60



1. Certain physical elements designed to serve a single unit including a “...chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture [that] lies partially within and partially outside the designated boundaries of a unit...”¹⁶¹ need not be shown. (This would apply generally to a condominium or cooperative.)
2. Similarly, other LCE, including “...fireplaces, shutters, awnings, window boxes, doorsteps, stoops, porches...and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit’s boundaries”¹⁶² need not be shown. (Again, this would be generally applicable to a condominium or cooperative.)
3. While such areas are not automatically LCE and are not required to be so designated, some areas are almost always designated as LCE, including specifically porches, decks, balconies, patios,¹⁶³ and front, side or rear yards that are not within the boundaries of an airspace unit.^a These typically are adjacent to the unit. Assuming the declaration so classifies them, they must be delineated, labeled and (if applicable) numbered on the map.¹⁶⁴ Only the general location (not dimensions tied to any monumentation) need be shown. (Again, this would typically apply generally to a condominium or cooperative, and not necessarily to a plat community or a miscellaneous community.)

TITLE COMMENT

The statute requires that the map show the general location of some, but not all, of these¹⁶⁵ on the map.^b It is recommended that others, such as side, back and front yard areas also be located on the map, as well as ANY other type of LCE space that is not physically adjacent to a unit.

4. Other common examples (typically, but not exclusively, for condominiums and cooperatives) include individual parking spaces, storage facilities, moorage slips, airplane hangar spaces, etc., which – assuming they are designated in the declaration as LCE – also must be delineated, labeled and numbered on the map.¹⁶⁶ For condominiums and cooperatives, only the general location (not dimensions tied to any monumentation) need be shown. However, a notation as to “typical size” or similar descriptive language, may be useful in the future if such LCE will need to be reconstructed or re-stripped. For plat communities and miscellaneous communities, any LCE probably will be located on a specific tract or parcel that is surveyed and delineated on the plat map. The map may identify such an area as a “lot” but however labeled, if it is a limited common element it should be so labeled.^c

TITLE COMMENTS

COMMENT 1: In a plat community, particularly in a short plat, such areas would typically be common area conveyed to the owners association or owned by the unit/lot owners as tenants in common. The right of access in such plats is typically treated as an easement appurtenant, particularly if used for access, utilities, well or drainage purposes, etc. This is still acceptable, but it would also be appropriate to

^a See “Units Without Physical Boundaries” in §12.2 on page 52

^b See “Limited Common Elements” in §17.8.9 on page 79

^c See also “Identification of LCE” in §14.4 on page 61 and “Boundaries and Area of LCE” in §14.5 on page 62



identify such a tract or parcel as LCE, even if the plat identifies the tract as reserved or granted as an easement benefiting one or more units/lots to satisfy platting requirements.

COMMENT 2: In a plat community, the boundaries of all units, lots, tracts, etc., will be surveyed. If for some reason only a portion of a common element tract or parcel will be allocated as an LCE to a unit/lot, dimensions of that LCE portion need not be shown. However, it would likely be practical to do so.

Refer to title company underwriting if there is any question about identification, dimensions or location of any LCE in a plat community or miscellaneous community.

14.1 REALLOCATION OF LIMITED COMMON ELEMENTS

LCE can be reallocated¹⁶⁷ pursuant to a reserved development right,^a or by mutual agreement between the affected unit owners and the consent of the owners association.¹⁶⁸ Reallocations must be by recorded amendment to the declaration.¹⁶⁹ An amendment to the map would not be necessary in situations where the LCE were created and allocated to units.

14.2 FUTURE LCE ALLOCATIONS

Note that LCE are still common elements, but they are portions of the common elements that have been allocated (assigned) to a unit. Thus, if there are such areas that will not be currently allocated LCE (for example, general unassigned parking spaces that are intended to be allocated as LCE in the future, they **would not** be designated as LCE in the declaration, but rather described as “real estate that may be allocated” as LCE.¹⁷⁰

Alternatively, the LCE can be created and allocated to a unit, but identified as subject to reallocation as units are conveyed.

The title company should consult with underwriting for any variation from these provisions.

TITLE COMMENT

All LCE must be assigned.^b In a plat community or miscellaneous community, it is unlikely that any common element would be intended to be allocated as LCE at a future date – all LCE would typically be identifiable when the declaration/CCRs and map are recorded.

However, in a condominium or cooperative, it is common that some LCE will not be allocated to specific units until some future date when those units are conveyed by the declarant.

^a See “Development Rights” in §16.0 on page 63

^b See also “Future LCE Allocations” in §14.2 on page 60



Thus, if portion of the common elements is to be allocated later, it is not initially an LCE. If LCE are to be allocated permanently to specific units as they are conveyed (even in a plat community or miscellaneous community), they must either be:

(a) allocated as LCE to a declarant-owned unit (and identified in both the declaration and on the map) and then reallocated^a by recorded declaration and amendments pursuant to a reserved development right,¹⁷¹ or

(b) remain part of the common elements and designated or described as real estate subject to the development right to be created and allocated later¹⁷² as LCE by recorded declaration and map amendments.

In both situations the reallocation would be pursuant to a reserved development right, and one or more amendments to the declaration (and the map, if not initially an LCE) must be recorded that coincide with the conveyances of the affected units by the declarant.

Any attempt to create un-allocated LCE should be referred to title company underwriting.

The statute does not require future LCE to be individually delineated on the map, nor for these areas to be labeled on the map. However, if such portions of the common elements are described in the declaration, it is recommended that they also be identified on the map. Note also that even if they are physically present (for example, striped and numbered parking spaces) they need not be shown on the map.

TITLE COMMENT

However, doing so (and by identifying the and numbering the spaces as subject to the development right to allocated as LCE) may preclude the need to amend the map when the declaration amendment is recorded. The amendment can then refer to the common element spaces by number that are being allocated as LCE to specific units. If those spaces are not shown on the original map, it must also be amended to show the location and identifying number of the LCE spaces.^b

14.3 FUTURE LCE ALLOCATIONS – TAXATION

The county assessor may require that any amendment allocating LCE to units be submitted for re-valuation of units for ad valorem tax purposes.¹⁷³

14.4 IDENTIFICATION OF LCE

LCE that are physically separated from the unit, such as parking spaces (whether garage, carport or open), moorage slips and storage lockers usually need to be separately numbered or lettered to facilitate (a) readily identifiable allocation to individual units, and (b) valuation by the assessor for tax purposes.

^a See “Reallocation of Limited Common Elements” in §14.1 on page 60

^b See also “Reallocation of Limited Common Elements” in §17.8.10 on page 80



Numbering of all LCE in the declaration and on the map must be consistent.

14.5 BOUNDARIES AND AREA OF LCE

Only the general location of LCE need to be shown; it is not necessary to survey the boundaries of or to show the square footage or floor and ceiling elevations, nor tie vertical boundaries to monuments.¹⁷⁴ However, their relative scale and location with respect to property lines, other LCE, adjoining units, support columns, elevator shafts, etc., should be indicated. Dimensions and area can be shown, however, if desired.

14.6 PART OF UNIT INSTEAD OF LCE

In some cases, typically with a condominium or cooperative, the declaration may provide that patios, decks, garages, carport spaces, storage rooms, or other areas that are traditionally treated as LCE may actually be part of an adjoining unit. If so, boundaries, area and elevation data is required, as would be the case for all portions of a unit.

For example, an enclosed garage may be physically connected to a unit (such as with a “townhouse” style of construction). It may therefore be included by definition in the declaration as part of the unit, rather than as a separate limited common element. Dimensions and elevations would then need to be shown and the area must be included in computing the total approximate unit area. Another example might be an adjacent patio that has no ceiling.

TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration. Also, if applicable, a distinction should be made as to areas that might otherwise be LCE (adjacent carport, enclosed garage, patio or deck areas) but that are part of the unit.

There is an exception to this horizontal boundary requirement.¹⁷⁵ For example, a deck or patio that is to be part of a unit (rather than LCE) might have the same elevations as the adjoining portion of the unit.^a If so, the map need not repeat this data if the location of the upper elevation is “reasonably located or depicted”.¹⁷⁶

14.7 NOT PART OF UNIT

If an enclosed space that is connected to a unit (such as the garage example^b) is to be designated as an LCE instead of part of the unit, then sufficient dimensions must be shown in order that by such delineation it is excluded from the unit dimensions and area.

^a See also “Horizontal Unit Boundaries” in §17.8.19 on page 84

^b See “Part of Unit” in §14.6 on page 62



TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration.

15.0 PRINCIPAL COMMON AMENITIES

The terms “common amenity” and “principal common amenity” are not defined in the statute, but presumably include features of a CIC that benefit the entire property as opposed to individual units (in which case they might be more appropriately identified as LCE). This might include interior roadways (particularly, as to a plat community, either private roads that are not dedicated in the plat to the public, or access easement strips that provide access to lots from dedicated streets), greenbelts, walkways, parking areas or garages (such as individual parking spaces or moorage slips that are not LCE but benefit the entire CIC), a swimming pool, tennis courts, play areas, a clubhouse or other community building, etc.

Note that the POS will identify principal common amenities, but they are not required to be identified in the declaration. Thus, the POS should be reviewed to determine if there are principal common amenities that should be identified on the map.^a

TITLE COMMENT

If there is any question about whether particular feature of a CIC is a principal common amenity, the title company should refer the matter to underwriting.

16.0 DEVELOPMENT RIGHTS

See also the definition of *development rights*.^b

The most common *development right* that particularly impacts the map preparation involves what is commonly called “phasing.” This includes instances in which

1. new land can be added with units/lots,^c or
2. new units can be added on land already included within the initial CIC,^d or
3. a new unit can be created by subdividing another unit or combining one or more existing units,^e or

Another development right that impacts the map preparation involves withdrawing land from the CIC.^f

^a See “Principal Common Amenities” in §17.8.14 on page 81

^b See “Development Rights” in §2.12 on page 19

^c See “Phasing – Adding Land & Units” in §16.1 on page 64 and “Addition of Unspecified Real Estate” in §16.3 on page 65

^d See “Phasing – Adding New Units in Common Elements” in §16.4 on page 66

^e See “Phasing – Subdividing Units” in §16.5 on page 67

^f See “Withdrawable Land” in §16.6 on page 67



All are permitted by WUCIOA.¹⁷⁷

Development rights can apply to either common elements or units/lots within the CIC or land located outside the boundaries of the CIC.

Note that in a plat community phasing (in context of WUCIOA) generally does not involve adding new lots to an existing plat, but rather adding a new plat division that utilizes the same declaration/CCRs. A plat community could have a large “development” lot/unit where title is retained by the declarant/developer for future subdivision. Even in this situation, however, that lot would typically be replatted as a new plat.

TITLE COMMENT

The creation of new plats that will be affected by a single declaration/CCRs (or added to an existing declaration/CCRs by a “spreading” amendment) with respect to shared expenses across all subdivisions may create a single CIC.

16.1 PHASING – ADDING LAND & UNITS

If there is a reserved right to add units by phasing that involves the addition of land that is not initially included in the CIC when it is first recorded, the declaration may describe that land,¹⁷⁸ and if so, the map should describe and delineate the initial phase as a separate and distinct parcel.¹⁷⁹

TITLE COMMENT

It may be that the declarant might not describe future potential phase land in the declaration if it was not owned by the declarant when the declaration is recorded. However, there is no requirement for such land to be owned by the declarant. There are additional considerations with respect to a plat community or miscellaneous community.^a

Although executed by a party not in title, the declaration will not necessarily encumber the “future phase” land. Notice of such phasing provides disclosure to unit purchasers in the first phase. Nonetheless, a declarant may be reluctant to describe land not yet owned.

If land is described that that declarant does not yet own, title companies will determine, when insuring potential “future phase” land, whether to show the declaration, and if it is shown, how to describe the declaration when insuring such land.

WUCIOA requirements also apply to amendments to both the declaration and map that add land – that is, such land can also be subject to development rights, which must be described and delineated in the same manner as in the original declaration.

^a See “Addition of Unspecified Real Estate” in §16.3 on page 65



TITLE COMMENT

See additional discussion elsewhere in this material of phasing as it relates to the addition of units after July 1, 2018, to a CIC created before that date.^a

The name of the CIC as shown on the map *should not* include the reference to the phase number (such as “Phase I” or “Phase 1”) of the CIC being created or expanded.^b

If the first phase and later phases are not comprised of separate legal lots, a prior plat subdivision complying with Ch. 58.17 RCW (including a binding site plan where permitted) may be required for the non-compliant parcels, so that the resulting CIC land (as well as remaining portions of that land not being added) does not constitute a violation of that chapter.^c

TITLE COMMENT

The surveyor must confirm, if the land being added qualifies as “unspecified real estate”^d that the area does not exceed 10% of the area of the initial land, or 10% of the initial land plus described addable land. The issue of unspecified real estate should be referred to title company underwriting.

16.2 MULTIPLE PARCELS AT DIFFERENT TIMES

If there are multiple parcels within the CIC subject to a development right, or if there are multiple parcels that may be added at different times, the declaration must so state.

If so, it must either (a) describe the parcels and state the order in which the rights can be exercised or the order in which they can be added, or (b) must state that no assurances are made in that regard.¹⁸⁰

If the parcels are described,^e then the map must show it and label them.¹⁸¹

Also, if (a) parcels can be added at different times and (b) if the right is exercised *on only a portion of such a parcel*, the declaration must also state whether that development right must be exercised in all or in any other portion *of the remainder of that land* originally subject to the right.¹⁸²

16.3 ADDITION OF UNSPECIFIED REAL ESTATE

WUCIOA provides for the addition of unspecified land to a plat community or miscellaneous community.¹⁸³ (This is not applicable to a condominium or cooperative.)

The right to add land is a development right, which right must be described in the declaration, and if the land is described, it must also be shown on the map.¹⁸⁴ This applies to all CICs.

^a See also “Post-WUCIOA Phases Added to Pre-WUCIOA Projects” in §8.0 on page 40

^b See “Heading and CIC Name” in §17.5 on page 71

^c See also “Subdivision Compliance by CIC” in §4.2 on page 23

^d See “Addition of Unspecified Real Estate” in §16.3

^e See “Legal Descriptions” in §17.8.1 on page 74



However, it is not necessary to describe the land that can be added. If the land to be added to a plat community or miscellaneous community is not described (“specified”) in the original declaration, it can be added by amending the declaration and maps only subject to the following conditions:

1. the right to add “unspecified real estate” must be included in the declaration,
2. it must be done within the time limit specified in the declaration,
3. the area of the land when added cannot exceed ten percent (10%) of the land initially included in the plat community or miscellaneous community *plus* any land (if any) that could be added and that was described in the declaration, and
4. the total number of units cannot exceed the number of units provided for in the original declaration.

If no additional potential phase land is described in the declaration, additional “unspecified” land could be added by amending the declaration (assuming the development right to do so was reserved), but the additional land cannot exceed 10% of the original land.

Similarly, if potential phase land was described in the original declaration, additional “unspecified” land could be added by amending the declaration (assuming the development right to do so was reserved), but the additional land cannot exceed 10% of the original land plus whatever land was described in the original declaration as potential phase land.

16.4 PHASING – ADDING NEW UNITS IN COMMON ELEMENTS

Both WCA and WUCIOA expressly permit the declarant to create new units in the future on part of the common elements of the initial CIC, that is, within the boundaries of the original property description.

TITLE COMMENT

Note that this can also apply to plat communities or miscellaneous communities where a large tract is a unit/lot owned by the declarant/developer, and is not a common element parcel. The unit/lot can be reserved for future subdivision within the plat pursuant to Ch. 58.17 RCW and local ordinances adopted pursuant thereto. In this case, subdivision of units is more likely the approach that will be used.^a

This type of phasing does not involve the addition of land, and therefore allows phasing (particularly for condominiums) when creation of a legal lot for each phase parcel is not permitted or is impractical. In such situations the portion or portions of the CIC land that will be subject to these development rights must be separately described and delineated and labeled on the map^b *if the description of the land is included in the declaration.*¹⁸⁵

TITLE COMMENT

Note also that title insurers may be reluctant to consider a “right to create” a unit as an insurable interest in real property. An alternative that would be especially practical for a condominium or cooperative involves the creation of “airspace” units which can be

^a See “Phasing – Subdividing Units” in §16.5

^b See also “Map Preparation” in §17.0 on page 68, and “Map Drawing” in §17.8 on page 74.



subdivided. In a plat community or miscellaneous community this would be done with a unit/lot and not a common element.^a

16.5 PHASING – SUBDIVIDING UNITS

The term “phasing” can also be applied to the reserved development right to add units within an existing unit. Examples in a condominium or cooperative would probably take the form of subdividing an airspace unit or subdividing a unit consisting of an entire floor of an existing building.

In a plat community or miscellaneous community, a large unit/lot that is intended for future subdivision would be used.

Airspace units (in a condominium) can be approximately the same size and location of individual units to be created, or they can be larger areas that can be further subdivided into traditional units. For example, an area within which a multi-story and multi-unit building will be built could be one airspace unit, or an area within which a row of five townhouses will be built could be represented as five airspace units. Each unit will be subject to the development right to construct improvements, and if necessary, the subject to the right to be subdivided.

In a condominium or cooperative, once the improvements are built, the unit is would then be subdivided into the newly created units, and both the declaration and the map will need to be amended to reflect the more traditional unit boundaries of the constructed units.

In a plat community or miscellaneous community, the subdivision can occur as permitted by the applicable local ordinance adopted pursuant to Ch. 58.17 RCW.

See additional discussion as to condominiums and cooperatives elsewhere in this material.^b Such units would require the appropriate certification shown on SCHEDULE A attached.

16.6 WITHDRAWABLE LAND

Land can be withdrawn from a CIC.¹⁸⁶ The declaration must describe the land^c or state that no assurances are made in that regard,¹⁸⁷ but if described, the map must delineate it.¹⁸⁸

TITLE COMMENT

Land described as withdrawable cannot be withdrawn once a unit within that portion of the CIC legal description has been conveyed.¹⁸⁹

16.7 SUBDIVIDE, COMBINE OR CONVERT UNITS

The declaration can reserve the development right to subdivide, combine, or convert a unit previously created into additional units or common elements.¹⁹⁰ These units must be identified in the declaration and shown and labeled on the map.¹⁹¹

^a See “Phasing – Subdividing Units” in §16.5.

^b See “Units Without Physical Boundaries” in §12.2 on page 52

^c See “Legal Descriptions” in §17.8.1 on page 74



16.8 OTHER DEVELOPMENT RIGHTS

The declarant may reserve the right to add other improvements or make changes within the CIC that do not involve either the addition of land and/or units or the withdrawal of land.

The land affected by each such development right must be described in the declaration,¹⁹² but there is no express requirement to describe or delineate such land on the map. However, especially if required by the declaration, it can be described and shown on the map, and labelled appropriately.

TITLE COMMENT

The surveyor should consult with the developer's attorney and the title company if there is any question about the need for a written legal description or delineation required for these types of development rights.^a

17.0 MAP PREPARATION

Specific information is required on the map.^b

For a plat community map, some information is either not required or is permitted to be shown on a map that is incorporated into the declaration/CCRs.¹⁹³ The chart shown on **SCHEDULE G** lists matters that can be shown on either the plat survey or attached to the declaration.

TITLE COMMENT

However, as a practical matter, most of this information probably will appear on the plat map approved by the local platting authority, since a surveyor will need to prepare the map that would be attached to the declaration, and certify that information.

17.1 DRAFT MAP

The final map cannot be recorded until the boundaries of units are substantially completed^c and the required map certifications can be made.¹⁹⁴ However, the declarant might need to deliver the POS to prospective unit purchasers before completion of the project. If so, it must contain at least an *unsigned draft* of the map prepared by the surveyor. It must contain all available information and data required by WUCIOA and outlined in this material, but would not be certified by the surveyor as completed.

The surveyor should also mark the draft map with the phrase “DRAFT” and may also add “PRELIMINARY: NOT FINAL FOR RECORDING” or a similar disclaimer such as is used on preliminary subdivision plats. However, the draft should show as much detail as possible, to avoid the

^a See also “Legal Descriptions” in §17.8.1 on page 74

^b For specific information relating to the drawing itself, see also “Map Drawing” in §17.8 on page 74

^c As noted in “Recording – Unit Boundary Substantial Completion” in §13.1, this applies to units with physical boundaries, such as walls, floors and ceilings. Also, this is not the “completion” that is related to whether the unit can be conveyed (based on completion of structural and mechanical components of a unit), nor to occupancy. That aspect of completion is addressed in RCW 64.90.630(2) and is an issue for the declarant. See “Conveyance – Unit Substantial Completion” in §13.2.



need to continue to provide additional draft versions of the map with an amended POS to prospective purchasers.

TITLE COMMENT

The final map must be (1) completed, (2) compared to the final declaration, as well as to the POS and a current title report, and (3) reviewed by both the title company and developer's attorney prior to recording.

17.2 LOCAL RECORDING REQUIREMENTS

See elsewhere in this material for additional discussion of the role of the local subdivision approval office and county recorder's office.^a

The surveyor should be familiar with local recording requirements when preparing the map. The map must be recorded in size, form, and material as established by the county recorder, and/or other relevant applicable statutes or ordinances.¹⁹⁵ Requirements may vary from county to county. (Refer also to RCW 58.09.050.)

A recording certificate for the county auditor to fill in would be provided, where the recording number and/or the volume and page for the document will be shown.

Note that for cooperatives, in those situations where the declarant has opted out of using a survey, the map, if separately recorded with the declaration, will probably still need to meet the local recording standards. In any event, it must be legible.

Note also that for a plat community, the plat map need not contain WUCIOA required elements, but it if doesn't they must be on a map attached to the declaration, prepared and certified by a surveyor.¹⁹⁶

TITLE COMMENTS

COMMENT 1: If a non-survey map for a cooperative is used and made a part of the declaration as permitted by statute,¹⁹⁷ care should be taken to make sure that it is of a size and format that is **legible**. Typically, copies of recorded documents are reproduced in a substantially reduced size. Non-survey maps *should not be made full size* (in a size and format similar to a survey) and then reduced for inclusion in a declaration. They may be unreadable. In addition, the further reduction when reproduced will render them virtually unreadable.

An additional consideration for a cooperative is the declarant's willingness to certify as to the data that would otherwise be certified by a surveyor.

COMMENT 2: As to a plat community (platted lots subjected to a declaration^b), although the certification required by RCW 64.90.245(6)(b) and the information required by RCW 64.90.245(8)(d) through (g) and (k), (m), (n), (9) and (10) can be on a map attached to the declaration and need not be on the plat map,¹⁹⁸ that map (a)

^a See also "Role of Subdivision Approval Agency" in §4.2.1 on page 25 and "Role of County Recorder's Office" in §4.2.2 on page 25

^b See "Plat and Plat Community" in §2.7 on page 14



would need to be of a size appropriate for attachment to the declaration as an exhibit, and (b) **must be legible**. As a practical matter, it may be appropriate for the surveyor to include that the information on the actual plat map, rather than produce a separate document for use with the declaration.^a

17.3 RECORDING DATA CROSS-REFERENCE

A cross-reference to the recording number of the accompanying declaration (and if applicable, to all previous maps and declarations)^b is required.¹⁹⁹ The information for any concurrent recording would be filled in by the recorder’s office at the time of recording.

See elsewhere in this material for additional discussion in connection with future amendments to the map.^c

17.4 ASSESSOR REVIEW

The completed map must be delivered to the county assessor.²⁰⁰

The county may also require the declaration to be reviewed by the assessor, but solely to allocate the assessed value and property taxes with respect to units (all CICs) and any other part of the property (with respect to a condominium, development rights might be assessed and taxed, but not the common elements).²⁰¹ See elsewhere in this material for additional discussion regarding the role of the assessor’s office.^d

It is not necessary to recite whether taxes affecting any of the property have been paid, because such payment at the time of recording is not required by statute, nor is it necessary to have taxes segregated, whether or not they are paid, for all units prior to recording.

Tax segregation for each unit is not required until and unless a unit is owned by someone other than the declarant.²⁰²

TITLE COMMENT

The required segregation may not occur prior to the recordation of the first few unit conveyances. However, if taxes are paid (or arrangements satisfactory to the title company are made for such payment) it may be possible to record a conveyance with an excise tax affidavit that recites that it is for “part of” the identified underlying tax parcel or parcels. This arrangement must be approved by the assessor.

In addition, a certificate indicating review and approval by the county assessor is permitted, but not required.²⁰³ This review and approval is permitted “...solely for the purpose of allocating the assessed value and property taxes”.

^a See also “Role of Subdivision Approval Agency” in §4.2.1 on page 25 and SCHEDULE G

^b See the examples on SCHEDULE A, SCHEDULE B, SCHEDULE C, SCHEDULE D, SCHEDULE E and SCHEDULE F attached

^c See “Cross Reference to Declaration(s) and Map(s)” in §18.3 on page 88

^d See also “Role of County Assessor’s Office” in §4.2.3 on page 26



TITLE COMMENT

This procedure is recommended, to avoid last minute refusals to record by the county recorder's office.

17.5 HEADING AND CIC NAME

The name of the CIC, usually in the title or heading, must be shown. It should include the term “**a condominium**” or “**a cooperative**” or “**a plat community**” or “**a miscellaneous community**” as applicable to be consistent with the declaration (which is required to include such recitals).²⁰⁴ Example: “**HOME SWEET HOME, a condominium.**” The name on the map should coincide exactly with the name the declarant has shown on the declaration.

A local jurisdiction may also require that the name of a *plat community* on the map be followed by a statement that the common interest community is a plat community as defined in WUCIOA. There is no statutory requirement for this.

The name should be confirmed as available in advance of recording, and reserved if possible, with the county recorder's office. The name can usually be reserved although a fee may be charged for this. It cannot be the same as any existing CIC in the same county.²⁰⁵ If a proposed CIC is submitted with a name that is identical with or too similar to an existing CIC (whether created under an existing plat, the HPR or the WCA) or if it is already “reserved” with the county for a future filing of another CIC project, it will not be accepted for recording.

If the CIC is to be phased (whether by the addition of land and units, or by creating units within the common elements), the name of the CIC as shown on the map **need not** and **should not** include the reference to the phase number (such as “Phase I” or “Phase 1”) of the CIC being created or expanded, for the following reasons:

1. The CIC will have a single name; phase recordings merely add units to that project. The term “phase” in Washington is colloquially applied to portions of a single, albeit expanding, project that are merely recorded sequentially. Thus, each phase in a CIC is still part of a single project, and as each phase is added (land and/or additional units), the legal boundaries of the CIC are merely expanded.
2. The allocated interest in the title to the common elements applicable to each unit in a condominium or cooperative is based on the interest in the entire common elements of the expanded CIC. Those interests are not calculated separately for individual phases.
3. Phasing is optional and may not occur. If it does occur, it need not occur in any particular order.

See elsewhere in this material for additional discussion of phasing.^a

Thus, for example, a phased condominium CIC named “Nulluslocus Estates, a condominium” would recite only that name in the title. The reference to the fact that the recording is for the first, or any later, phase could be reflected in two places:

1. The intro to the written legal description for the applicable phase.

^a See “Phasing – Adding Land & Units” in §16.1 on page 64



2. As a label on the map drawing for the applicable phase.

TITLE COMMENT

Of course, each project could be a separate CIC, with separate allocated interests for units. In such situations, a common approach to this situation is to use a different qualifier, such as “Division I.”

17.6 EXECUTION BY DECLARANT

The declarant is usually the fee owner of the land, but it can also be the owner of a lesser interest, such as a lessee under a lease or even a sublessee. A declarant might be vested with different estates or interests in different parcels that comprise the CIC.

The surveyor should confirm the identity of the declarant with the both (a) the developer’s attorney and (b) the title company in order to prepare a proper format for the signature blanks for the declarant.

Care should be taken to see that the identification of the declarant on the map agrees with the title report and CIC declaration, including names of all of the owners. Acknowledgments should be appropriate to the entity and in the proper form.

It is not necessary that mortgagees or easement holders join in the execution map.

Similarly, in the case of a leasehold or subleasehold CIC (where a lessee or sublessee creates a CIC on the leasehold estate it owns in land and improvements), while the lessor/sublessor must execute the declaration²⁰⁶, the lessor/sublessor is not required to sign the map.

17.7 REQUIRED CERTIFICATES AND DECLARATION

Unlike the WCA, where certifications and declarations relating to the map were either required or permitted to be in the declaration, they are now required to be shown on the map. (Note, however, that for a survey for a project *that is a plat community CIC*, some data required by WUCIOA can be on a map containing such matters that is part of the declaration and certified by the declarant).²⁰⁷ See elsewhere in this discussion regarding the surveyor’s certification.^a

These requirements also apply to a map amendment, such as a phasing amendment that adds units to a previously created CIC.^b

17.7.1 DECLARANT SIGNATURE, DECLARATION(S) AND ACKNOWLEDGMENT

The declaration must be executed by the declarant,^c in the same manner as a deed.²⁰⁸ All signatures should be properly acknowledged.

^a See “Surveyor Certification” in §17.7.2 on page 73

^b See also “Map Amendments” in §18.0 on page 86

^c Note that there is no express requirement for execution by the declarant, but obviously that is necessary. It also follows from the requirement that a declaration “must be executed in the same manner as a deed” and the requirement that the certification by the declarant be signed. In addition, the statute expressly requires it for amendments to the declaration

The map must be similarly executed and acknowledged.²⁰⁹ (This has always been a requirement for plat communities.²¹⁰)

In addition, a *declaration* statement executed and acknowledged by the declarant is required for all CICs and must be shown on all maps.²¹¹ (This can be attached to the declaration.²¹²) The language must be substantially as shown on **SCHEDULE C**.

A second optional certification by the declarant (in lieu of the surveyor's certification discussed elsewhere in this material^a) would be required for cooperatives **but only if** the declarant has opted to forego using a survey as the map.^b Otherwise a survey is also required for a cooperative, certified by the surveyor.

17.7.2 SURVEYOR CERTIFICATION

A *certification* by a licensed surveyor is required if the map is a survey.²¹³ The map must be a survey for condominiums, plat communities and miscellaneous communities, but is optional for a cooperative.

This does not mean that the data required for a non-survey map for a cooperative (or miscellaneous community^c) need not include all required data. It only means that the declarant will be certifying the information instead of a surveyor.

Some data required by WUCIOA for a plat community can be shown on a map attached to the declaration and include both the declarant's declaration and surveyor's certificate.²¹⁴ See also **SCHEDULE G** for a list of what can be included in the declaration.

The statute requires a certification by a licensed surveyor for all CICs, except, optionally, a cooperative when the declarant has elected to certify the information on a map that is not a survey.²¹⁵

See **SCHEDULE A** attached for the statutory language for the surveyor certification. Note that the surveyor's certificate as required by RCW 58.09.080 for land surveys is incorporated with this language, and if it used, that certificate need not be shown separately.

As to a plat community (platted lots subjected to a declaration), the certification may be made in a map incorporated in or attached to the declaration,^d and need not be on the plat map itself.²¹⁶

made by the declarant. (64.90.200(10), RCW 64.90.240(2), RCW 64.90.245(12), RCW 64.90.250 & RCW 64.90.415(2)(d)).

^a See "Surveyor Certification" in §17.7.2 on page 73

^b See "Optional Cooperative or Miscellaneous Community Certificate" in §17.7.3 on page 74, and attached **SCHEDULE E**

^c See "Survey Requirement for Miscellaneous Community" in §5.1.4 on page 34 for a discussion of survey requirements for a miscellaneous community

^d See the important note "Local Recording Requirements" in §17.2 on page 69 for suggestions on the method used by the surveyor.



17.7.3 OPTIONAL COOPERATIVE OR MISCELLANEOUS COMMUNITY CERTIFICATE

A cooperative also requires that the map be a survey, unless the declarant opts out.²¹⁷ However, all data required by WUCIOA for maps must still be shown, and the declarant would make the certification that would otherwise be required of a surveyor.²¹⁸

The statutory language for this form of certification is shown on **SCHEDULE E**.

17.8 MAP DRAWING

The map drawing must include certain items.

17.8.1 LEGAL DESCRIPTIONS ON MAP

The following written legal description are to be shown on the map:

1. The legal description of the land in the CIC must be shown in full.²¹⁹ This would also be in the declaration.²²⁰
2. Any appurtenant easement that benefits the CIC land. A written description for this is not expressly required,²²¹ but it should be included for title insurance purposes, whether or not a title company considers that the easement is insurable.^a The easement can be recited by metes and bounds description or by reference to the recorded document that created it.

This does not include interior roads in a condominium or cooperative, which are part of the common elements. However, if these roadways (in a condominium or cooperative) are easements appurtenant to other property, including future phases, a description may be needed.^b

Interior roads created within plat community when it is recorded could fall into one of two categories: (a) roads dedicated in the plat for public purposes, or (b) common elements (which might be further designated as LCE for one or more units/lots in that CIC). Neither need be separately described as easements appurtenant in the CIC legal description.

Similarly, roads created within a miscellaneous community when it is recorded likely will be common elements or LCE for that CIC. They need not be separately described as easements appurtenant in the legal description of the CIC.

3. Portions that are leasehold land,²²² unless the entire property is subject to one lease. In that situation, a general statement to that effect as a heading to the CIC description will suffice. (Note that *as to a plat community only* this could be contained in a map attached to the declaration. But, legibility must be considered.^c
4. Land that may be added later (future “phases”) *if that land is described in the declaration or an amendment to the declaration.*²²³ Note that the declarant has the option in the declaration to either

^a A title company will review such easements for insurability and can limit coverage in a policy if it is deemed necessary. See also “Access” in §10.0 on page 46

^b See additional discussion of roads and access issues in “Recorded Easements” in §17.8.12 on page 80, and “Principal Common Amenities” in §17.8.14 on page 81, and see also “Dedications for Public Purposes” in §11.1 on page 48

^c See “Local Recording Requirements” in §17.2 on page 69



fix and describe those boundaries, or to state that no assurances are made with respect to such descriptions.²²⁴

If those boundaries are in the declaration, they must be on the map. (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^a

5. Portions of the common elements (or, in a plat community, an actual platted tract or parcel that is not a common element, and where title is retained by the declarant) that are subject to the development right to add units (future “phases,” but not on added land) *if (as to a condominium or cooperative) that land is described in the declaration or an amendment to the declaration.*²²⁵ Note that the declarant has the option to either fix and describe those boundaries, or to state that no assurances are made with respect to such descriptions.²²⁶ If they are in the declaration (or an amendment), they must be included on the map. Again, note that in a plat community such land can and should be surveyed as a platted tract or parcel.

TITLE COMMENT

Note that *as to a plat community only* this could be contained in a map attached to the declaration.^b

6. Land that may be withdrawn pursuant to a reserved development right *if that land is described in the declaration or an amendment to the declaration.*²²⁷ Note that the declarant has the option in the declaration to either fix and describe those boundaries, or to state that no assurances are made with respect to such descriptions.²²⁸ If they are in the declaration, they must be on the map. (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^c
7. Those portions of the land subject to other development rights *if required by the declaration.*^d (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^e

17.8.2 LEGAL DESCRIPTIONS FOR DECLARATION

The declaration must include some legal descriptions that are not expressly required to be recited on the map, although the boundaries for some are required to be shown on the map. Generally, the surveyor would be required to provide these descriptions, and as a practical matter, they should be included on the map, even when the boundaries are also delineated on the map.

1. Land that may be allocated subsequently as limited common elements by the declarant.²²⁹

^a See “Local Recording Requirements” in §17.2 on page 69

^b But, see the caveat, particularly relating to legibility, in “Local Recording Requirements” in §17.2 on page 69

^c See “Local Recording Requirements” in §17.2 on page 69

^d See also “Other Development Rights” §16.8 on page 68

^e See “Local Recording Requirements” in §17.2 on page 69



2. Land that may be affected by any development right *if fixed in the declaration*.²³⁰ If fixed, the description must also be included and delineated on the map.²³¹ The declarant has the option of describing such rights and stating that the boundaries are not to be fixed in the declaration.

See elsewhere in this material for additional discussion regarding legal descriptions on the map.^a

17.8.3 BOUNDARIES

The following boundaries must be delineated:^b

1. Land included in the initial CIC.²³² The legal description would also be in the declaration.²³³
2. The location of easements, whether they are appurtenant to the CIC land or burden the CIC land.²³⁴ This is “to the extent feasible.” (Note that this is not expressly required for a plat community, but title companies would generally want this included.)

TITLE COMMENT

The surveyor should discuss with the title company any concerns about the feasibility of locating and dimensioning any easements.

3. Land included in the initial CIC that is subject only to the development right to withdraw, labeled “MAY BE WITHDRAWN FROM THE [insert type of common interest community; e.g. “CONDOMINIUM” or “COOPERATIVE”].”²³⁵ (Note that as to a plat community only this could be contained in a map attached to the declaration.) Again, legibility must be considered.^c
4. Those portions of the common elements subject only to the development right to add units (which would necessarily require reallocating allocated interests for either assessments or voting rights, and title – this latter being applicable to condominiums or cooperatives), labeled “SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS”.²³⁶

TITLE COMMENTS

COMMENT 1: This would be especially applicable to a condominium or a cooperative, but, *with respect to the reference to common elements*, not necessarily a plat community or miscellaneous community. That is because as to any parcel within a plat community or miscellaneous community that is intended to be subdivided into additional units/lots, it will not be a common element and but rather a unit, title to which will be retained by the declarant/developer.

HOWEVER, even as to a plat community or miscellaneous community, such a unit lot that is called a tract or parcel in the plat, even if not common element, should be so labeled because allocated interests for assessments and voting could change with the future subdivision.

^a See also “Legal Descriptions on Map” in §17.8.1 on page 74 and “Boundaries” in §17.8.3

^b As to a plat community (a plat that is a CIC), see the important note “Local Recording Requirements” in §17.2 on page 69 for suggestions on the method used by the surveyor, particularly the issue of legibility.

^c See “Local Recording Requirements” in §17.2 on page 69



COMMENT 2: As to a plat community *only* this could be contained in a map attached to the declaration. But, legibility must be considered.^a

5. Any unit (including a lot in a plat community) subject to the *development right to add units*^b (which would necessarily require reallocating allocated interests for either assessments or voting rights, and title – this latter being applicable to condominiums or cooperatives).²³⁷
6. Future phase land (not included in the initial CIC) subject to the *development right to add units* (which would necessarily require reallocating allocated interests), labeled “SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS”.²³⁸ (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^c)
7. Any land subject to development other development rights, but only if required to be shown by the declaration.²³⁹ Such land should be labeled “SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION.”^d

TITLE COMMENT

As to a plat community *only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^e

8. The portion or portions of land that is leased, unless one lease covers the entire land. If there is more than one lease, each lease description should be delineated. Leased land must be labeled “LEASEHOLD REAL ESTATE.” (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Legibility must be considered.^f)

17.8.4 UNITS SUBJECT TO DEVELOPMENT RIGHTS

All units must be shown, but if a unit is subject to the development right to convert it to common elements or to create new units within it (including subdividing it^g), the affected unit must be identified.²⁴⁰

This would also be applicable to large tracts or parcels in a plat community or miscellaneous community that might be subdivided into additional units/lots in the future. (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^h)

^a See “Local Recording Requirements” in §17.2 on page 69

^b See also “Units Subject to Development Rights” in §17.8.4 on page 77

^c See “Local Recording Requirements” in §17.2 on page 69

^d See also “Other Development” in §16.8 on page 68

^e See “Local Recording Requirements” in §17.2 on page 69

^f See “Local Recording Requirements” in §17.2 on page 69

^g See also “Phasing – Subdividing Units” in §16.5 on page 66

^h See “Local Recording Requirements” in §17.2 on page 69



There is no statutory language for such “identification” but the following is suggested: “THIS UNIT SUBJECT TO DEVELOPMENT RIGHT SET FORTH IN THE DECLARATION [THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS].”

17.8.5 NON-CONTIGUOUS PARCELS

The distance between non-contiguous parcels must be shown.²⁴¹ (Not expressly required for a plat community, but this would likely be an element of any recorded plat.)

17.8.6 BUILDING LOCATION AND DIMENSIONS

The location (tied to property corners) and dimensions of any existing building which contains one or more units, or which comprises a unit, must be shown.²⁴² (Note this is not likely to apply to a plat community, BUT if it does, and *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility must be considered.^a)

It is especially important to locate buildings that contain units on land that is subject to the right to withdraw (whether all of the land or only a portion), because if a unit located on that land is conveyed, the right to withdraw that portion terminates.²⁴³

Any existing *unit structure* should be located with respect to the airspace unit boundary.²⁴⁴ See elsewhere in this material for additional discussion of airspace units and unit boundaries.^b

17.8.7 UNIT IDENTIFICATION

The map must show the unit *numbers* or *letters* or such other identifying symbol used in the declaration, as the case may be.²⁴⁵

The numbering or lettering system for the units (as well as for LCE such as parking spaces or storage lockers) must be consistent with the declaration and with the physical numbering on the doors or spaces themselves.

If an address is used as the unit identification (or shown for any other reason), confirmation should be obtained from the United States Postal Service prior to recording. Note that a street or mailing address can be changed at any time, and it is not recommended that it be used as a unit identification number.

17.8.8 IMPROVEMENTS WITHIN AIRSPACE UNITS

As to condominiums and cooperatives in particular, the statute does not expressly require that improvements located within an airspace unit (such as a single-family home, manufactured home, houseboat, etc., whether or not they are defined in the declaration as a “unit structure” or similar term) be located on the map. However, “all...matters customarily shown on land surveys” must be shown.²⁴⁶

^a See “Local Recording Requirements” in §17.2 on page 69

^b See “Units Without Physical Boundaries” in §12.2 on page 52 and “Unit Structures” in §12.3 on page 53) should be located with respect to the airspace unit boundary, and also see also “Improvements within Airspace Units” in §17.8.8 on page 78

This would be especially important if there are any encroachments of such improvements onto adjoining units/lots, or onto the common elements.

TITLE COMMENT

Plats normally do not include improvements within the boundaries of individual lots, and most plats are recorded prior to improvements being constructed. However, both a plat community (platted lots subjected to a declaration) and a miscellaneous community would show existing improvements.

17.8.9 LIMITED COMMON ELEMENTS

The map must show the general location of specific types of LCE as described in the declaration. These include: porches, decks, balconies, patios, storage facilities, moorage spaces and parking spaces.²⁴⁷ These would be typically applicable to condominiums and cooperatives.

While not required, an LCE front, side or back yard area should also be shown. These would typically apply to units in condominiums and cooperatives where those areas are not within the unit boundaries.^a

As to plat communities and miscellaneous communities, common area tracts or parcels (whether conveyed to the owners association or owned in common by the unit/lot owners) are often shown on the plat map and designated or dedicated as easements for such purposes as access, utilities, well or drainage. While not expressly required, such tracts or parcels (which may be designated as a lot, whether or not it is also a unit) that are designated or dedicated as easements benefiting certain units/lots could also be further designated as LCE.^b (The designation/dedication as “easements” may be a requirement of the platting authority.)

As noted, all common elements that are also to be LCE must be allocated in the declaration. If an allocation is to occur in the future (which must be by amendment to the declaration), the area would initially be common elements but can be identified as common elements that can be allocated pursuant to a reserved development right.

If applicable, identifying **numbers** or **letters** must be shown, corresponding to the numbers or letters shown in the declaration. Typically, porches, decks, balconies and patios will not be numbered, but must still be shown. Non-adjacent moorage spaces and parking spaces typically are numbered. Storage facilities typically would be numbered unless located on a patio, deck or balcony.

If an area that is designated as LCE in the declaration is not also allocated to a unit in the declaration, the title company should consult with underwriting.

See elsewhere in this material for additional discussion of LCE and allocations.^c

^a See also “Limited Common Elements” in §14.0 on page 58

^b See also “Limited Common Elements” in §14.0 on page 58

^c See also “Limited Common Elements” in §14.0 on page 58 and “Reallocation of Limited Common Elements” in §14.1 on page 60 and “Future LCE Allocations” in §14.2 on page 60



17.8.10 REALLOCATION OF LIMITED COMMON ELEMENTS

Reallocations must be by recorded amendment to the declaration.²⁴⁸ However, in the event LCE are reallocated,^a the map should not have to be amended to show LCE, since they would have already been shown. They can be reallocated pursuant to a reserved development right,²⁴⁹ or by mutual agreement between the affected unit owners and the consent of the owners association.²⁵⁰

17.8.11 ENCROACHMENTS

The map must show all encroachments either way across property lines (especially those indicating possible possession rights of non-title holders), and *including* those affecting boundaries between the separately delineated parcels within the CIC that are subject to **development rights**.²⁵¹ (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Legibility should also be considered.^b

Encroachments of any so-called “unit structure” onto the common elements or onto adjoining units would also be shown.

17.8.12 RECORDED EASEMENTS

All recorded easements that either burden the property or any part of it, or that are appurtenant to any portion of the land must also be located and dimensioned “to the extent feasible.”²⁵²

TITLE COMMENT

Note that if an easement is not locatable on the map (for example, a grant of an easement to be located “as constructed”), it should not be ignored, but recited in a map legend, with a notation that it is not feasible to show the location or dimensions. The surveyor should discuss any concerns about feasibility with the title company.

Note that interior roadways of a condominium and cooperative are part of the **common elements**. They need to be delineated but are not easements appurtenant to the land nor to the units. However, they may represent either “principal common amenities” or easements burdening the land if the CIC is part of a larger project of several separate CICs, or if future phase land is granted an easement over them for future development.

A plat community might include one or more common element access parcels that connect one or more lots to a street that is dedicated in the plat. The parcel might also be appropriately designated as a LCE and also as a principal common amenity^c (required to be identified in the POS but not in the declaration). However characterized, such parcels should be located on the map.²⁵³

^a See “Reallocation of Limited Common Elements” in §14.1 on page 60

^b See “Local Recording Requirements” in §17.2 on page 69

^c See “Principal Common Amenities” in §17.8.14 on page 81



17.8.13 UNRECORDED EASEMENTS

Unrecorded easements (that either burden or benefit the CIC) must be shown “to the extent feasible” that are apparent or of which either *the surveyor or the declarant* knows or *reasonably should have* known.²⁵⁴ The surveyor should consult with the declarant and the title company on this issue.^a

Such may include readily identifiable matters such as overhead power lines or driveways, but may also include possible easements disclosed by catch basins, junction boxes, power vaults, etc., for which there is no apparent recorded easement grant, or any unrecorded underground easements in favor of local utilities or adjoining properties.

The surveyor should also determine whether any easements are expected to be recorded during the period before the CIC is recorded or soon thereafter.^b

TITLE COMMENT

The existence of such easements may be determinable based on discussions with the declarant. If at all possible, such easements should be recorded prior to the recordation of the declaration and map. In any event, the title company should be made aware of such easements, and will take appropriate exception for them.

The correct status of each must be reflected on the map when the CIC is actually recorded.

17.8.14 PRINCIPAL COMMON AMENITIES

The general location of each *existing* principal common *amenity*^c as described in the POS^d is to be delineated and labeled.²⁵⁵

Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility should also be considered.^e

Note also that in a plat community or miscellaneous community, a private road or common area tract might be designated as an easement benefitting one or more lots. These tracts probably could be additionally identified as LCE in the declaration and on the map) and/or as principal common amenities (on the map).

TITLE COMMENT

If there is any question about whether particular feature of a CIC is a principal common amenity, the title company should refer the matter to underwriting.

^a See also “New Road Dedications & Easements” in §11.0 on page 47

^b See also “New Road Dedications & Easements” in §11.0 on page 47.

^c See “Principal Common Amenities” in §15.0 on page 63

^d RCW 64.90.610(1)(K): “Brief descriptions of (i) the *existing principal common amenities*, (ii) those amenities *that will be added* to the common interest community, and (iii) those amenities that *may be added* to the common interest community.”

^e See “Local Recording Requirements” in §17.2 on page 69



Note that only *existing* principal common amenities need be shown, but as amendments to the map are made pursuant to phasing or other development rights, they will need to be added if existing at the time of the amendment.

Note that the POS is to also identify those principal common amenities that *will be added* and those that *may be added*. The statute does not require that these be shown on the map, but if they are shown (and if they are improvements^a), the map must label them as to whether they “must” or “may” be built.²⁵⁶

17.8.15 FUTURE IMPROVEMENTS

The intended location and dimensions of *future improvements* contemplated by the declaration must be shown, if requested by the declarant.²⁵⁷ This may be in connection with *principal common amenities* or future phase improvements, such as the location of proposed units. The statute does not require that they be shown, but if they are they must be labeled either “**MUST BE BUILT**” or “**NEED NOT BE BUILT**” depending on the provisions of the declaration. (Note that *as to a plat community only* this could be contained in a map attached to the declaration. Again, legibility should also be considered.^b

TITLE COMMENT

This requires coordination between the developer and the surveyor, because the language in the declaration may only identify future improvements, but not indicate whether the map will show them.

17.8.16 OTHER SURVEY MATTERS

Other matters customarily shown on land surveys are required to be shown.²⁵⁸ This might include (to the extent not covered by other specific requirements for the map) roads, driveways, walkways, fences, rockeries, retaining walls, violations of covenants or restrictions, parties in possession, etc., but not necessarily trees or topographical (such as contours) data. Some of these might also be considered “principal common amenities.”

This would include in particular improvements that create encroachments.

17.8.17 INTERIOR SURFACES

If a unit will have the statutory default boundaries, the interior *unfinished* surface of the walls, floors, and ceilings^c will be the boundaries. Dimensions that are shown on the map would be based on this, as would be the calculated area of the unit.

^a See also “Future Improvements” in §17.8.15

^b See “Local Recording Requirements” in §17.2 on page 69

^c Thus, drywall would be part of the common elements, but paint or wallpaper would not. However, these distinctions will be addressed in the declaration.

TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration. Also, if applicable, a distinction should be made as to areas that might otherwise be LCE (adjacent carport, enclosed garage, patio or deck areas) but that are part of the unit, as discussed elsewhere in this material.^a

Interior partitions such as walls between rooms as well as fixtures and improvements such as cabinets, do not need to be shown if they are part of the unit. As to dropped ceilings and raised or sunken floors, those variations need not be shown, but only if the spaces are within the unit boundaries.

Bearing walls or columns should be shown where possible if they are common elements and they serve or support more than one unit.

See elsewhere in this material for additional discussion of unit boundaries.^b

17.8.18 VERTICAL UNIT BOUNDARIES

Each unit's *vertical* (e.g., side) boundaries must be tied to property corners using an established monument.²⁵⁹ If the unit is in a building, this can be done by tying the unit's boundaries to the location and dimensions of the buildings, which in turn would be located on the map. As to units located within a building, interior dimensions of the units need to be shown, *including the dimensions of variations caused by raised or lowered ceilings* (unless those spaces are part of the unit; see "Interior Surfaces" in §17.8.17 above), *sloped ceilings, and raised or sunken floors* (unless those spaces are part of the unit).

TITLE COMMENT

If boundaries between units is the "plane in space" that is located between the walls of two adjoining units (as discussed in "Unit Boundaries" in §12.0 above on page 49) the area is to be calculated based on the location of those planes in space, and not the interior surfaces of the related walls, floors or ceilings.

See also "Horizontal Unit Boundaries" in §17.8.19 below, and in "Limited Common Elements" in §14.0 above on page 58.

Exterior building wall widths and widths of walls between units that are located in a building can be shown to the extent necessary to locate the vertical boundaries of units. Note, however, that wall widths may be difficult or impossible to measure, especially in older buildings. Thus, there is flexibility as to this requirement:

"In showing or projecting the location and dimensions of the vertical boundaries of a unit located in a building, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from

^a "Part of Unit Instead of LCE" in §14.6 on page 62

^b See "Vertical Unit Boundaries" in §17.8.18 and "Horizontal Unit Boundaries" in §17.8.19 on page 84

adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the map under subsection (8)(f) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building.”²⁶⁰ [emphasis added]

Vertical unit boundaries would be the basis for the calculated square footage of each unit, which is to be shown in the declaration for condominiums, cooperatives and miscellaneous communities, but not plat communities.²⁶¹ Caution should be exercised to make sure limited common element areas are not included in unit square footage calculations.

Square footage need not be shown on the map. If they are, they must be consistent with the figures shown in the declaration.

TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration. Also, if applicable, a distinction should be made as to areas that might otherwise be LCE (adjacent carport, enclosed garage, patio or deck areas) but that are part of the unit, as discussed elsewhere in this material.^a

17.8.19 HORIZONTAL UNIT BOUNDARIES (ELEVATIONS)

The horizontal unit boundaries (elevations) must be shown. All elevations must tie to an established elevation datum, with the *bench mark* identified and shown.²⁶² This information for each unit is often shown on a chart, but can be shown within each unit or by a general statement, whichever is more practical.

Note that as to an individual airspace unit in a condominium,^b cooperative or miscellaneous community need not have an upper or lower boundary, as long as (a) there are no vertically stacked units above or below that particular unit, and (b) as to condominiums and cooperatives, there are common elements. It is acceptable in such cases for the upper and/or lower horizontal boundary to be defined as the “limits of legal ownership” or similar wording.

For units in a condominium or cooperative that have default unit boundaries, all floor and ceiling elevations, *including variations for raised or lowered ceilings* (unless those spaces are part of the unit^c), *sloped ceilings and raised or sunken floors* (unless those spaces are part of the unit), must be shown. (The dimensions of the vertical boundaries of these variations must also be shown.^d)

^a See “Part of Unit Instead of LCE” in §14.6 on page 62

^b See also “Units Without Physical Boundaries” in §12.2 on page 52

^c See “Interior Surfaces” in §17.8.17 on page 82

^d See “Vertical Unit Boundaries” in §17.8.18 on page 83



TITLE COMMENT

If a boundary between units is the “plane in space” that is located between the floor of one unit and the ceiling of another unit^a the area is to be calculated based on the location of those planes in space, and not the interior surfaces of the related walls, floors or ceilings.

If a unit in a building is located on more than one level, it is recommended that the floor and ceiling elevations for each story be shown. This would not be necessary if the boundary between units is the plane in space that is located between the floor elevation of the upper unit and the ceiling elevation of the lower unit, as discussed elsewhere in this material.^b

If a portion of a unit is located outside of a building, it can have the same upper and lower elevations as the adjoining portion of the unit that is located within the building. The requirement is that elevations need not be shown if the location of the horizontal boundaries “is otherwise reasonably described or depicted.”²⁶³ If so, a statement may be made to that effect, and only the elevation for one of them need be shown.

However, both must be shown if they differ. For example, there might be an open patio or deck, where the declaration provides that such is part of the unit (rather than as an LCE). If the upper elevation of the patio portion of the unit (where there may not be a physical ceiling) is intended to be the same as the adjoining living room, the elevation for just the living room could be shown with a statement in the patio area that it is the same as the living room. Alternatively, the upper boundary could be the elevation of a second story of the unit (which is required to be shown); again, a statement to that effect could be shown.

If these are LCE rather than part of the unit, however, they must be shown on the map,²⁶⁴ but dimensions and elevations are not required.^c

17.9 AREA; NUMBER OF ROOMS

The surveyor may be asked to provide the number of rooms and the calculations used to determine the square footage for units in a condominium, cooperative or miscellaneous community. (This data is not required for a plat community.) It is not necessary to show the square footage or the number of rooms on the map, however. These calculations should be provided to the declarant or declarant’s attorney, because they are required to be stated in the declaration.

TITLE COMMENT

Although the area of each unit is typically calculated by the surveyor, it is not required to be shown on the map. However, if is shown, it should be consistent with the areas shown in the declaration. Also, if applicable, a distinction should be made as to areas that might otherwise be LCE (adjacent carport, enclosed garage, patio or deck areas)

^a As discussed in “Unit Boundaries” in §12.0 on page 49

^b See “Unit Boundaries” in §12.0 on page 49

^c See also “Limited Common Elements” in §14.0 on page 58



but that are part of the unit, as discussed in “Part of Unit Instead of LCE” in §14.6 above on page 62.

18.0 MAP AMENDMENTS

Not all amendments to the declaration require an amendment to the map, but any amendment to the map must include a corresponding, and concurrently recorded, amendment to the declaration.²⁶⁵ The surveyor should review the proposed amendment to the declaration to confirm that the map and declaration amendments are consistent.

TITLE COMMENT

Although this section deals with map amendments, most fall under the category of amendments to the declaration, which would require an accompanying amendment to the map.

Reasons for recording an amendment to the map can include the following, showing the party who must execute the amendment:

1. Declarant: Create new units within the common elements (exercise development right).²⁶⁶
2. Declarant: Add land and create new units on the added land (exercise development right).²⁶⁷
3. Declarant: Withdraw land **IF** no unit within that land has been sold (exercise of development right).²⁶⁸ NOTE: this may require a subdivision of the land pursuant to Ch. 57.18 RCW.^a
4. Declarant: Correct mistake, inconsistency, error, or ambiguity (declaration and map expressly mentioned).²⁶⁹
5. Association: Correct errors on the map (declaration expressly mentioned).²⁷⁰
6. Declarant: Subdivision of a unit (exercise of development right, typically an airspace unit).²⁷¹
7. Association *and* affected unit owners: Incorporate common elements or LCE into a unit or convert common element into LCE.²⁷²
8. Association *and* affected unit owners: (a) Subdivide a unit, or (b) combine two or more units,²⁷³ or (c) relocate unit boundaries.²⁷⁴

NOTE: RCW 64.90.255 also deals with alteration of unit boundaries and common elements such as creating an aperture between units or between a unit and the common elements. This by itself does not itself require an amendment to the map. However, RCW 64.90.255 says “After acquiring an adjoining unit or *an adjoining part of an adjoining unit...*”

This phrase does not mean that this section can also be used to accomplish the relocation of boundaries or combination of units without complying with either RCW 64.90.260 or RCW 64.90.265. That would have to happen independently, and would in any event be necessary to properly identify the resultant units and their identifying numbers, area and allocated interests.

9. Association and affected unit owners: Portions of the land have been taken by condemnation.²⁷⁵

^a See “Withdrawal of Land” in §4.4 on page 27



NOTE: Any land within the common elements of an existing CIC that is to be condemned pursuant to RCW 64.90.030 would also require subsequently amending the declaration and map to show the revised CIC boundaries, but in addition would show any related amended data (number of units, allocated interests, etc.) if affected by the conveyance.

10. Association: Conveyance of common elements.²⁷⁶ This often occurs in connection with the widening of a public right of way abutting the CIC.

NOTE: Any land within the common elements of an existing CIC (other than a plat community) that is to be conveyed for any purpose, including a public right of way, pursuant to RCW 64.90.415, would also require subsequently amending the declaration and map to show the revised CIC boundaries, but in addition would show any related amended data (number of units, allocated interests, etc.) if affected by the conveyance.^a

11. Association: Partial termination, i.e., a withdrawal of a portion of the common elements. This is not expressly permitted, but may be attempted instead of a conveyance under RCW 64.90.415. It may or may not attempt to utilize the procedure for full termination under RCW 64.90.290.^b In this scenario, it may be intended that the conveyance of the former common elements be done after the withdrawal. (Such a conveyance may have to be executed by all unit owners and require affirmative partial releases as to any unit encumbrance.) The amended declaration and map would show the revised CIC boundaries, but in addition would show any related amended data (number of units, allocated interests, etc.) if affected by the termination.

TITLE COMMENT

The entire process of any of the above procedures – especially a purported “partial termination” – should be reviewed by a title company, even if there is no pending title transaction relating to an individual unit.

18.1 RECORDING REQUIREMENTS

As with the original map, each map filed for a common interest community, and any amendments to the map, must be in the style, size, form, and quality as prescribed by the recording authority of the county where filed, and a copy must be delivered to the county assessor.²⁷⁷

18.2 AMENDED MAP HEADING

The first page of a map amendment must show as part of the heading the name of the CIC as it appears on the original map (matching the declaration), including the type of CIC.^c

^a See also “Conveyance or Encumbrance of Common Elements” in §4.6 on page 29

^b See also “Withdrawal or Partial Termination – Not Per Development Right” in §4.5 on page 28

^c See also “Heading and CIC Name” in §17.5 on page 71



18.3 CROSS REFERENCE TO DECLARATION(S) AND MAP(S)

An amended map must include a cross-reference to the recording data of (1) the earlier recorded original declaration, (2) the earlier recorded map, (3) the concurrent amendment to the declaration, and (3) any earlier amendments to either the map or the declaration.²⁷⁸

While not expressly required, it is recommended that the cross reference include the original map and all subsequent amendments to the map to date. This will avoid ambiguity as to the changes being made and which maps are being superseded or amended.

These recitals can be contained in the CIC declaration signed by, as appropriate, the declarant, or the owners association, and the affected unit owners. See SCHEDULE B, SCHEDULE D, SCHEDULE E and SCHEDULE F for examples.

18.4 EXECUTION, CERTIFICATION AND DECLARATION

Any map amendment must be executed by the same party who executes the corresponding amendment to the declaration.²⁷⁹

Note that the amended map must include a certification by the surveyor in most cases, and a declaration in all cases, which are consistent with the statutory requirements relating to the original CIC map. These include:

1. The *certification* by the surveyor as to the boundaries of any newly created units, must be updated. It may be necessary to revise the certification language shown in SCHEDULE A to address the nature of the amendment while still including the substantive elements of the statutory certificate. An example is shown in SCHEDULE B. The language of the certification can also be modified to limit the certification to only the newly added units, if the original map included certification for the original units and they are not-being re-certified. If new units are not being created, the certification can delete the reference to unit boundaries.
2. Similarly, the form of declaration by the declarant as shown in SCHEDULE C may also need to be revised to address the nature of the amendment while still including the substantive elements of the statutory declaration. An example is shown in SCHEDULE D.
3. If the amendments are made by the association (and in some cases, the affected unit owners), it would be appropriate to amend the form of certification as suggested on SCHEDULE F.

18.5 COMPLIANCE WITH WUCIOA

An amended map must comply with all of the requirements and standards applicable to the original map, including being a survey (except for some cooperatives). The map must show the necessary detail as was required for the initial map.

This would include the description of added land, descriptions, depictions and labelling of land subject to development rights, data for newly created units, LCE depictions, encroachments, principal common amenities, and signatures by necessary parties, including individual unit owners as appropriate.



18.6 MAP AMENDMENTS – SURVEY NOT REQUIRED?

Some minor corrections or changes to a previously recorded map might arguably be made without formally amending the survey in the manner contemplated by RCW 64.90.245.

Such amendments might involve, for example, adding detail to common elements that *do not* relate to unit boundaries, limited common elements or unit numbering. An example might involve the association's numbering of common element parking spaces that will not be treated as limited common elements. This could involve recording a declaration amendment to which is attached a map or sketch of the affected areas, even if that attachment is a copy of a portion of the originally recorded map of the CIC. If acceptable to the county recorder's office, a copy of the map or a sheet from that map that was previously recorded might be recorded.

Any such declaration amendment or separately recorded map should be readily identifiable as to the CIC as previously recorded (CIC name, recording data, etc.).

TITLE COMMENT

There is no statutory description of such amendments, nor is there any obligation of the county recorder's office to accept an amendment to the map (a) that is not a survey complying with either RCW 64.90.245 or Ch. 58.18 RCW, (b) that is without an accompanying declaration amendment, or (c) that is not attached to a declaration amendment or does not identify the affected CIC. Any amendment to a map that is apparently not in compliance with WUCIOA should be referred to title company underwriting.



SCHEDULE A

Surveyor's Certificate Required for all Maps that are Surveys.^a

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of _____ [*name of party requesting the survey, i.e, typically the declarant*] on _____ [*date*].

I hereby certify that this map for _____ [*name of CIC*] is based upon an actual survey of the property herein described; that the bearings and distances are correctly shown; that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein; and that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map.

NAME

SIGNATURE

LICENSE OR CERTIFICATE NUMBER

ACKNOWLEDGMENT (appropriate form for signatory)

The following or similar statement would also be required on the face of the map, if some units have physical boundaries and some have airspace boundaries, as defined in the declaration (see "Substantial Completion" in §13.0 above on page 54).

As to Unit(s) _____, the horizontal and vertical boundaries of are determined by the walls, floors and ceilings thereof. (b) As to Unit(s) _____, the horizontal and vertical boundaries of are not determined by physical boundaries. [*Add, if applicable:* (c) As to Unit(s) _____, some of the horizontal and vertical boundaries, as identified on the map, are determined by the walls, floors and ceilings thereof, and some of the horizontal and vertical boundaries, as identified on the map, are not determined by physical boundaries.]

TITLE COMMENT

When amendments are made to an existing map (for example, when additional units are adding pursuant to reserved development rights, or changes in unit boundaries because of subdivision or combination, etc.), the map must be similarly certified by the surveyor. SCHEDULE B is an example of such a certification.

^a (1) Required for all CICs *except cooperatives when the declarant has opted out of a survey* (see **SCHEDULE E** for that form of declarant's certificate).

(2) This is permitted to be included in or attached to the declaration for a plat community rather than shown on the plat survey.

(3) This incorporates the surveyors certificate required by RCW 58.09.080. (4) Also, see generally "Surveyor Certification" in §17.7.2 on page 73.



SCHEDULE B

SURVEYOR'S CERTIFICATE [*For amendment*]

This amended map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of _____ [*name of party requesting the survey, for example, the declarant for development rights, or the association for other amendments*] on _____ [*date*].

I hereby certify that this amended map for _____ [*name of CIC*] is based upon an actual survey of the property herein described; that the bearings and distances are correctly shown; that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein; and [*as to units _____ only*]^a that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map.

[*NOTE: The following may be added if the survey is for a plat community:*]

With respect to the requirements of the Survey Recording Act, if this is a plat community the requirements of WAC 332-130, *et seq.* have been applied.

NAME

SIGNATURE

LICENSE OR CERTIFICATE NUMBER

ACKNOWLEDGMENT (appropriate form for signatory)

The following or similar statement may also be required on the face of the map, if some units have physical boundaries and some have airspace boundaries, as defined in the declaration (see "Substantial Completion" in §13.0 above on page 54).

As to Unit(s) _____, the horizontal and vertical boundaries of are determined by the walls, floors and ceilings thereof. (b) As to Unit(s) _____, the horizontal and vertical boundaries of are not determined by physical boundaries. [*Add, if applicable:* (c) As to Unit(s) _____, some of the horizontal and vertical boundaries, as identified on the map, are determined by the walls, floors and ceilings thereof, and some of the horizontal and vertical boundaries, as identified on the map, are not determined by physical boundaries.]

^a (1) The surveyor must certify as to newly added units in the same manner as the original map.

(2) If only new units are to be certified, this phrase can be amended to identify only those units, unless the intent is to re-certify the information shown for the original units.

(3) If the amendment does not include the addition of new units, the phrase "...and that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map" can be deleted.

(4) Again, note that this contemplates a single certification form whether or not the unit boundaries are "planes in space" or physical monuments, such as floors, ceilings and walls. Each type of boundary must be delineated on the survey.



SCHEDULE C

Declarant's Declaration – required on all CICs^a

DECLARATION BY DECLARANT

The undersigned owner or owners of the interest in the real estate described herein hereby declare this map and dedicate the same for a common interest community named _____ [*name of CIC*], a _____ [*type of CIC*], as that term is defined in the Washington Uniform Common Interest Ownership Act, solely to meet the requirements of the Washington Uniform Common Interest Ownership Act and not for any public purpose. This map and any portion thereof is restricted by law and the Declaration for _____ [*repeat name of CIC*], recorded under _____ [*name of county*] County Recording No. _____ [*recording number*].^b

NAME/ENTITY

SIGNATURE/TITLE

ACKNOWLEDGMENT (appropriate form for signatory)

When amendments are made to an existing map (for example, when additional units are added pursuant to reserved development rights, or changes in unit boundaries because of subdivision or combination, etc.), the map must include a similar declaration by the declarant. SCHEDULE D is an example of such a declaration.

^a (1) This is permitted to be included in or attached to the declaration for a plat community rather than shown on the plat survey.

(2) See generally “Declarant Signature, Declaration” in §17.7.1 on page 73.

^b This must also include reference to the recording data for the earlier declaration and/or map plus any and all earlier amendments to either, if the current recording were an amendment to the map.



SCHEDULE D

DECLARATION BY DECLARANT [*For amendment*]

The undersigned owner or owners of the interest in the real estate described herein hereby declare this map and dedicate the same for a common interest community named _____ [*name of CIC*], a _____ [*type of CIC*], as that term is defined in the Washington Uniform Common Interest Ownership Act, solely to meet the requirements of the Washington Uniform Common Interest Ownership Act and not for any public purpose.

This amended map and any portion thereof is restricted by law and is recorded with an amendment to the declaration for _____ [*repeat name of CIC*] recorded under _____ [*name of county*] County Recording No. _____ [*recording number*], and amendment(s) thereto recorded under Recording No(s). _____.^a

NAME/ENTITY

SIGNATURE/TITLE

ACKNOWLEDGMENT (appropriate form for signatory)

^a Include all prior amendments to the declaration and the maps.



SCHEDULE E

Declarant's Certificate – Required for any Map that is not a Survey
(Applicable to cooperatives or miscellaneous communities only, as an option^a)

CERTIFICATE BY DECLARANT

I hereby certify on behalf of _____ [*name of declarant*] that this map for _____ [*name of CIC*] was made by me or under my direction in conformance with the requirements of *RCW 64.90.245*; that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein; and that all horizontal and vertical boundaries of the units, (1) to the extent determined by the walls, floors, or ceilings thereof, or other physical monuments, are substantially completed in accordance with said map, or (2) to the extent such boundaries are not defined by physical monuments, such boundaries are shown on the map.^b

NAME/ENTITY

SIGNATURE/TITLE

ACKNOWLEDGMENT (appropriate form for signatory)

NOTE: If the certification is for an amended map that is not a survey, the following can be added before the signatures:

This amended map and any portion thereof is restricted by law and is recorded with an amendment to the declaration for _____ [*repeat name of CIC*] recorded under _____ [*name of county*] County Recording No. _____ [*recording number*], and amendment(s) thereto recorded under Recording No(s). _____.^c

The following or similar statement may also be required on the face of the map, if some units have physical boundaries and some have airspace boundaries, as defined in the declaration (see “Substantial Completion” in §13.0 above on page 54).

(a) As to Unit(s) _____, the horizontal and vertical boundaries of are determined by the walls, floors and ceilings thereof. (b) As to Unit(s) _____, the horizontal and vertical boundaries of are not determined by physical boundaries. [*Add, if applicable:* (c) As to Unit(s) _____, some of the horizontal and vertical boundaries, as identified on the map, are determined by the walls, floors and ceilings thereof, and some of the horizontal and vertical boundaries, as identified on the map, are not determined by physical boundaries.]

^a See “Distinction Between “Map” and “Survey” under WUCIOA” in §5.0 on page 31 and “Optional Cooperative or Miscellaneous Community Certificate” in §17.7.3 on page 74.

^b Note that this contemplates a single certification form whether or not the unit boundaries are “planes in space” or physical monuments, such as floors, ceilings and walls. Each type of boundary must be delineated on the map.

^c Include all prior amendments to the declaration and the maps.



SCHEDULE F

Association's and Unit Owner's Certification

Appropriate for any Map Amendment that is NOT Recorded by a Declarant
NOTE: The Surveyors Certificate in SCHEDULE B would also be required.

CERTIFICATON

The undersigned, including as shown, the owner or owners of the interest in the real estate described herein, hereby certify on behalf of _____ [*name of association*] [*and*] [*add name(s) of affected unit owner(s) if required*] that this amendment to the map for _____ [*name of CIC*], a _____ [*type of CIC*], was made by me or under my [*or "our" if appropriate*] direction in conformance with the requirements of RCW 64.90.245; as that term is defined in the Washington Uniform Common Interest Ownership Act, solely to meet the requirements of the Washington Uniform Common Interest Ownership Act and not for any public purpose, and further certify that all information required by the Washington Uniform Common Interest Ownership Act is supplied herein;

This amended map is recorded with an amendment to the declaration for _____ [*repeat name of CIC*] recorded under _____ [*name of county*] County Recording No. _____ [*recording number*], and amendment(s) thereto recorded under Recording No(s). _____.^a

NAME(S) OF AFFECTED UNIT OWNERS

ASSOCIATION NAME/ENTITY

SIGNATURES/TITLE

ACKNOWLEDGMENTS (appropriate form for signatory)

^a This recital should include not only the contemporaneously recorded amendment to the declaration, but also all previously recorded amendments to either of the declaration or map.



SCHEDULE G

WUCIOA Plat Community Map Requirements

The following chart lists WUCIOA requirements for a map in connection with a plat community.

NOTE: There are TWO options for the map:

WUCIOA permits data to be either (a) on the plat survey, or (b) on a WUCIOA compliant map attached to the declaration.

If the former is done, the additional information would appear on the plat survey.

If the declarant, declarant’s attorney and surveyor collectively opt for the latter, then the plat survey submitted for subdivision approval will look very much like a pre-WUCIOA plat. The map provided for the declaration must still be prepared by a surveyor. (See also “Local Recording Requirements” in §17.2 above on page 69.)

NOTE: If the plat community does not include elements listed in items 8 through 27 (particularly 8 through 25) in the chart below, the remaining required information might more practically be shown on a map scaled to fit the declaration, rather than superimposed on the plat map. (See also the caveat for item 16.)

If the plat does include any one or more of those items, then showing them on the plat survey map (either superimposed on the main map, or on an additional page added to the plat survey map) might be more practical, depending on the scale of the information that is shown.

WUCIOA does not replace or supersede any requirements imposed by Washington law with respect to survey standards in general or subdivision plats; rather it requires certain information to be disclosed in the declaration or on a map.

However, in either situation, neither the local subdivision approval agency nor the county recorder’s office is responsible for (a) determining if the plat is a CIC that is subject to WUCIOA, or (b) confirming that the plat complies with WUCIOA. (See “Role of Subdivision Approval Agency” in §4.2.1 above on page 25 and “Role of County Recorder’s Office” in §4.2.2 above on page 25.)

The relevant statutes are:

RCW 64.90.245(2): “With the exceptions of subsections (1), (3), (4), and (14) of this section, this section does not apply to a plat as defined in RCW 58.17.020.”

RCW 64.90.245(14): “As to a plat community, the information required under subsections (6)(a) and (c), (8)(d) through (g), (k), (m), and (n), (9), and (10) of this section is required, but may be shown on a map incorporated in or attached to the declaration, and need not be shown on the plat community map. Any such map is deemed a map for purposes of applying the provisions of this section, and the declarant must provide the certification required under subsection (6)(b) of this section.”

See chart listing these requirements. The following §§ cites are to RCW 64.90.245

	.245 §§	WUCIOA Required Info	Location	Comment
1	(1)	WUCIOA map data	Plat survey, unless on map attached to declaration	Surveyor must always prepare map & include §§(6)(a) certification – §§(14)



	.245 §§	WUCIOA Required Info	Location	Comment
2	(3)	Executed by declarant	Plat survey, unless on map attached to declaration	May be required by subdivision approval agency and county recorder. Also applies to amendments – §§(4) (although may be HOA and/or owners instead of declarant)
3	(3)	Recorded concurrently with declaration		Also applies to amendments
4	(3)	Cross reference to declaration	Plat survey even if map is attached to declaration	Also applies to amendments
5	(4)	Amendments		Generally, matters required on original map also required on amendments; may be executed by the same part(ies) authorized to execute the declaration and its amendments
6	(6)(a)	Surveyor certification	Plat survey, unless on map attached to declaration	Still required if on map attached to declaration – §§(14) (only exception is for optional non-survey map for a cooperative)
7	(6)(c)	Declarant declaration	Plat survey, unless on map attached to declaration	
8	(8)(d)	Withdrawable land, if described in declaration – <i>boundaries</i>	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land
9	(8)(d)	Withdrawable land, if described in declaration – <i>description</i>	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land
10	(8)(d)	Withdrawable land, if described in declaration – <i>recital</i> “MAY BE WITHDRAWN”	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land
11	(8)(e)	Land subject to addition of units & reallocation, if described in declaration – <i>boundaries</i>	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land
12	(8)(e)	Land subject to addition of units & reallocation, if described in declaration – <i>description</i>	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land



	.245 §§	WUCIOA Required Info	Location	Comment
13	(8)(e)	Land subject to addition of units & reallocation, if described in declaration – <i>recital</i> “MAY BE WITHDRAWN”	Plat survey, unless on map attached to declaration	Also required if map is an amendment, and amendment describes the land
14	(8)(f)	Buildings containing or comprising units, if there are any in declaration – <i>location</i>	Plat survey, unless on map attached to declaration	However, not typical of a plat – units typically would be the lots themselves (however, townhouses and duplexes may qualify here)
15	(8)(f)	Buildings containing or comprising units if there are any – <i>dimensions</i>	Plat survey, unless on map attached to declaration	However, not typical of a plat – units typically would be the lots themselves (however, townhouses and duplexes may qualify here)
16	(8)(g)	Encroachments, by or upon any portion of the plat, if any	Plat survey, unless on map attached to declaration (but see comment)	HOWEVER, while this is apparently permitted by WUCIOA, WAC 332, requiring encroachments to be shown on the survey, would control
17	(8)(k)	Leasehold land, if any – <i>location</i>	Plat survey, unless on map attached to declaration	Does NOT require written legal description
18	(8)(k)	Leasehold land, if any – <i>dimensions</i>	Plat survey, unless on map attached to declaration	Does NOT require written legal description
19	(8)(k)	Leasehold land, if any – <i>labelled</i> “LEASEHOLD REAL ESTATE”	Plat survey, unless on map attached to declaration	
20	(8)(m)	<i>Existing</i> principal common amenities as listed in POS, if any – <i>general location</i>	Plat survey, unless on map attached to declaration	Requires review of POS (see RCW 64.90.610(1)(k))
21	(8)(n)	Limited common elements, if any – <i>general location</i>	Plat survey, unless on map attached to declaration	Porches, decks, balconies, patios, storage facilities would not be typically be LCE in a plat, but private driveways, parking spaces, moorage spaces, etc., that are not within the lot boundaries could be allocated as LCE
22	(8)(n)	Limited common elements, if any – <i>identifying number or designation</i>	Plat survey, unless on map attached to declaration	This depends on the declaration. A parking space in the common elements might have a number, while a park area shared by only some lots might be “designated” without numbering



	.245 §§	WUCIOA Required Info	Location	Comment
23	(9)	Contemplated improvements, if any – location	Plat survey, unless on map attached to declaration	However, not typical of a plat – declarant would provide direction. May be considered a development right
24	(9)	Contemplated improvements, if any – dimensions	Plat survey, unless on map attached to declaration	However, not typical of a plat – declarant would provide direction. May be considered a development right
25	(9)	Contemplated improvements, if any – labelled “MUST BE BUILT” or “NEED NOT BE BUILT”	Plat survey, unless on map attached to declaration	However, not typical of a plat – declarant would provide direction. May be considered a development right
26	(10)	Units within which a unit can be created, if any	Plat survey, unless on map attached to declaration	This might be a lot that can be subdivided; would be a development right
27	(10)	Units within which common elements can be created, if any	Plat survey, unless on map attached to declaration	This might be a lot that can be subdivided; would be a development right



¹ RCW 64.90.245(3)

² RCW 64.90.010(19) & RCW 64.90.245(1)

³ RCW 64.90.245(4)

⁴ RCW 64.90.245(14); see also the separate WUCIOA Map & Survey Guidelines

⁵ RCW 64.90.245(1)

⁶ RCW 64.90.245(6)(a) & RCW 64.90.245(13); see also Ch. 58.09 RCW.

⁷ RCW 64.90.245(6)(b)

⁸ RCW 64.90.245(3) & RCW 64.90.245 (6)(c).

⁹ RCW 58.17, *et seq.*

¹⁰ RCW 64.90.245(7); see also the separate WUCIOA Map & Survey Guidelines

¹¹ RCW 64.90.010(31), requiring compliance with Title 58 RCW, *et seq.*

¹² RCW 64.90.010(10)

¹³ RCW 64.90.075, RCW 64.90.110 & RCW 64.90.115

¹⁴ RCW 64.90.010(19)

¹⁵ RCW 64.90.245(1)

¹⁶ WCA RCW 64.34.020(17) & HPR 64.32.010(9)

¹⁷ RCW 64.90.010(19): “Declaration” means the instrument, *however denominated*, that creates a common interest community, including any amendments to the instrument.”

¹⁸ RCW 64.90.010(31)

¹⁹ RCW 64.90.245(14)

²⁰ RCW 64.90.245(1)

²¹ RCW 64.90.245(5)

²² WCA RCW 64.34.200(2) & HPR RCW 64.32.100

²³ RCW 64.90.010(53)

²⁴ RCW 64.90.245(5)

²⁵ RCW 64.90.245(14)

²⁶ RCW 64.90.010(7)(a)

²⁷ RCW 64.90.010(11): “Condominium” means a common interest community in which *portions of the real estate are designated for separate ownership* and the *remainder of the real estate is designated for common ownership* solely by the owners of those portions. A common interest community *is not a condominium unless* the undivided interests in the common elements *are vested in the unit owners.*”

²⁸ RCW 64.90.010(11)

²⁹ RCW 64.90.235(6)(a)

³⁰ RCW 64.90.465



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- ³¹ RCW 64.90.020(1)
- ³² RCW 64.90.010(15)
- ³³ RCW 64.90.235(6)(b)
- ³⁴ RCW 64.90.010(7)(a)
- ³⁵ RCW 64.90.245(6)(b) and RCW 64.90.245(8)(c)
- ³⁶ RCW 58.17.040(7)
- ³⁷ RCW 64.90.010(37)
- ³⁸ RCW 64.90.010(7)(b)
- ³⁹ RCW 64.90.075(2) & (3)
- ⁴⁰ RCW 64.90.010(33)
- ⁴¹ RCW 64.90.010(7)(b)
- ⁴² RCW 64.90.010(11)
- ⁴³ RCW 64.90.075(2) & (3)
- ⁴⁴ RCW 64.90.245(6)(b) and RCW 64.90.245(8)(c)
- ⁴⁵ RCW 64.90.210(6)(a)
- ⁴⁶ RCW 64.90.010(11)
- ⁴⁷ RCW 64.90.210(6)(a)
- ⁴⁸ RCW 64.90.200(3)(c)
- ⁴⁹ RCW 64.90.010(30)
- ⁵⁰ RCW 64.90.010(20)
- ⁵¹ RCW 64.90.010(51)
- ⁵² RCW 64.90.015(13)
- ⁵³ RCW 64.90.600(1)
- ⁵⁴ RCW 64.90.610(3)
- ⁵⁵ RCW 64.90.245(8)(m)
- ⁵⁶ RCW 64.90.320
- ⁵⁷ RCW 58.17.040(7)
- ⁵⁸ See RCW 64.90.245(8)(h) (Note that this section is not required for plat community maps, it is not listed in RCW 64.90.245(14)).
- ⁵⁹ RCW 58.17.040
- ⁶⁰ The ALTA Owner’s and Loan Policies (6-17-06) include the following exclusion from coverage: “The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of: 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to...(iii) the subdivision of land;...”.
- ⁶¹ RCW 64.90.025(3): “Ch. 58.17 RCW does not apply to the creation of a condominium or a cooperative. This chapter must not be construed to permit the creation of a condominium, cooperative or miscellaneous community on a lot, tract, or parcel of land that could not be sold or transferred without violating chapter 58.17 RCW.”



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- ⁶² RCW 58.17.040(7)
- ⁶³ RCW 64.90.010(33)
- ⁶⁴ RCW 64.90.010(10)
- ⁶⁵ RCW 64.90.025(2) & (3)
- ⁶⁶ RCW 64.90.245(14) “As to a plat community, the information required under subsections (6)(a) and (c), (8)(d) through (g), (k), (m), and (n), (9), and (10) of this section, or new certifications of any map previously recorded if that map otherwise conforms to the requirements of subsections (3), (4), (6), and (8) of this section.” Also see a form of certificate on **SCHEDULE G**.
- ⁶⁷ RCW 64.90.010(33)
- ⁶⁸ RCW 64.90.200(1), RCW 64.90.225(1)(d) and RCW 64.90.245(3)
- ⁶⁹ RCW 64.90.025(5)
- ⁷⁰ RCW 64.90.245(7)
- ⁷¹ RCW 64.90.010(20)
- ⁷² RCW 64.90.245(12)
- ⁷³ RCW 64.90.245(4)
- ⁷⁴ RCW 64.90.250(4)
- ⁷⁵ RCW 64.90.465
- ⁷⁶ RCW 64.90.290
- ⁷⁷ RCW 64.90.025(5)
- ⁷⁸ RCW 64.90.465
- ⁷⁹ RCW 64.90.465(7)(a)
- ⁸⁰ RCW 64.90.465(1)(a) and RCW 64.90.405(2)(h)(i)
- ⁸¹ RCW 64.90.465(2)(a) and RCW 64.90.405(2)(h)(ii)
- ⁸² RCW 64.90.465(1)(a) and RCW 64.90.405(2)(h)(i)
- ⁸³ RCW 64.90.010(33)
- ⁸⁴ RCW 64.90.465(1)(a)
- ⁸⁵ RCW 64.90.200(1)(a)
- ⁸⁶ RCW 64.90.025(4)
- ⁸⁷ RCW 64.90.010(53)
- ⁸⁸ RCW 64.90.245(c)
- ⁸⁹ RCW 64.90.025(3)
- ⁹⁰ RCW 64.90.010(10)
- ⁹¹ RCW 59.17.160(2) & RCW 58.17.250
- ⁹² RCW 64.90.025(3)
- ⁹³ RCW 64.90.010(10)
- ⁹⁴ RCW 64.90.025(3)
- ⁹⁵ RCW 64.90.025(3)



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- ⁹⁶ RCW 64.90.245(5)
- ⁹⁷ RCW 64.90.010(10)
- ⁹⁸ RCW 64.90.025(3)
- ⁹⁹ RCW 64.90.025(3)
- ¹⁰⁰ RCW 64.90.010(10)
- ¹⁰¹ RCW 64.90.010(33)
- ¹⁰² RCW 64.90.245(6)(b)
- ¹⁰³ RCW 58.17.035 (“The binding site plan...shall be filed with the county auditor with a record of survey.”)
- ¹⁰⁴ RCW 58.17.060(1) provides that a short plat ordinance “may require surveys” and if it does it “shall require that the survey be completed and filed”; notwithstanding this, a title company may require that the WUCIOA map for a CIC created on lots in a short plat include a survey.
- ¹⁰⁵ RCW 58.17.040(2)
- ¹⁰⁶ RCW 64.90.010(5)
- ¹⁰⁷ RCW 64.90.010(31)
- ¹⁰⁸ RCW 64.90.245(8)(c); see also RCW 59.17.160 & RCW 58.17.250
- ¹⁰⁹ RCW 58.17.020(6) and (8)
- ¹¹⁰ RCW 64.90.010(31)
- ¹¹¹ RCW 58.17.020(7)
- ¹¹² RCW 58.17.160
- ¹¹³ RCW 64.90.245(2) and (14)
- ¹¹⁴ RCW 64.90.245(2) and (14)
- ¹¹⁵ RCW 64.90.010(31)
- ¹¹⁶ RCW 64.90.245(8)(c)
- ¹¹⁷ RCW 64.90.245(6)(b)
- ¹¹⁸ RCW 64.90.010(31)
- ¹¹⁹ RCW 64.90.245(8)(c)
- ¹²⁰ RCW 64.90.245(6)(b) and RCW 64.90.245(8)(c)
- ¹²¹ RCW 64.90.075(2) & (3): RCW 64.90.020 (separate titles and taxation), RCW 64.90.025 (applicability of local ordinances, regulations, and building codes) & RCW 64.90.030 (eminent domain)
- ¹²² RCW 64.90.010(33)
- ¹²³ RCW 64.90.075(2) & (3): RCW 64.90.020 (separate titles and taxation), RCW 64.90.025 (applicability of local ordinances, regulations, and building codes) & RCW 64.90.030 (eminent domain)
- ¹²⁴ RCW 64.90.075(4) “...[*new section*] Except as otherwise provided in RCW 64.90.080, this chapter does not apply to any common interest community created within this state after July 1, 2018, if: (a) That common interest community is made part of a common interest community created in this state prior to July 1, 2018, pursuant to a right *expressly* set forth in the declaration of the preexisting common interest community; and (b) The declaration creating that common interest community *expressly* subjects that common interest community to the declaration of the preexisting common interest community pursuant to such right described in (a) of this subsection.” [*emphasis added*] [Sec. 203, Ch. 238, Laws of 2019, amending RCW 64.90.075]



¹²⁵ RCW 58.17.040(2)

¹²⁶ Chapter 238, Laws of 2019, amending RCW 64.90.075.

¹²⁷ RCW 64.90.245(3)

¹²⁸ RCW 64.90.300

¹²⁹ RCW 64.90.115

¹³⁰ RCW 64.90.075(3)

¹³¹ RCW 64.90.075(2) & (3)

¹³² RCW 64.90.100(2)

¹³³ RCW 64.90.100(1)

¹³⁴ RCW 64.90.100(4)

¹³⁵ RCW 64.90.280(2)

¹³⁶ This is essentially a title insurance requirement, although (1) it would be a requirement before a plat community could be approved in the subdivision process, and (2) as to other CICs a title company may elect to insure the project with appropriate exceptions to policy coverage relating to access.

¹³⁷ RCW 64.90.245(8)(h)

¹³⁸ RCW 64.90.010(37)

¹³⁹ RCW 64.90.210(1): “Except as provided by...in the case of a plat community...the map...”

¹⁴⁰ RCW 64.90.010(33)

¹⁴¹ RCW 64.90.210(1): “Except as provided by...in the case of a...miscellaneous community...the map...”

¹⁴² RCW 64.90.210(1)(a) & RCW 64.90.225(1)(d)

¹⁴³ RCW 64.90.225(1)(d)

¹⁴⁴ RCW 64.90.245(8)(i) & (j) and certified pursuant to RCW 64.90.245(6)(a)

¹⁴⁵ RCW 64.90.630(2) & RCW 64.90.600

¹⁴⁶ RCW 64.90.010(37) & RCW 64.90.210(1)

¹⁴⁷ RCW 58.09.080

¹⁴⁸ RCW 64.90.245(8)(o)

¹⁴⁹ The ALTA Owner’s and Loan Policies (6-17-06) define land as: “Land”: The land described in Schedule A, and affixed improvements *that by law constitute real property*. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy. [*emphasis added*]

¹⁵⁰ RCW 64.90.010(57)(c) & RCW 64.90.255(4)

¹⁵¹ RCW 64.90.245(8)(o)

¹⁵² RCW 64.90.200(2) & RCW 64.90.630(1)

¹⁵³ RCW 64.90.200(2)

¹⁵⁴ RCW 64.90.630(2)

¹⁵⁵ RCW 64.90.200(2)

¹⁵⁶ RCW 64.90.245(6)(a) & RCW 64.90.245(13)



157 RCW 64.90.245(5)
158 RCW 64.90.245(5) & RCW 64.90.245(6)(b)
159 RCW 64.90.245(6)(a) or (b)
160 RCW 64.90.010(16)
161 RCW 64.90.210(1)(b)
162 RCW 64.90.210(3)
163 RCW 64.90.245(8)(n)
164 RCW 64.90.245(8)(n)
165 RCW 64.90.245(8)(n)
166 RCW 64.90.245(8)(n)
167 RCW 64.90.010(20)(b) & (e)
168 RCW 64.90.240(1)(b) & (2a)
169 RCW 64.90.240(2)(b) & (3)
170 RCW 64.90.225(1)(f)
171 RCW 64.90.010(20)(b) & RCW 64.90.225(1)(f)
172 RCW 64.90.010(20)(e)
173 RCW 64.90.025(5)
174 RCW 64.90.225(n)
175 RCW 64.90.225(8)(j)
176 RCW 64.90.225(8)(j)
177 RCW 64.90.010(20)
178 RCW 64.90.225(1)(g) & (h)
179 RCW 64.90.245(8)(e)
180 RCW 64.90.225(1)(g) & (h)
181 RCW 64.90.245(8)(e)
182 RCW 64.90.225(1)(h)(ii)
183 RCW 64.90.315
184 RCW 64.90.225(1)(h)(i)
185 RCW 64.90.245(8)(e)
186 RCW 64.90.010(20)
187 RCW 64.90.225(1)(h)(i)
188 RCW 64.90.245(8)(d)
189 RCW 64.90.250(4)
190 RCW 64.90.010(20); RCW 64.90.250
191 RCW 64.90.245(8)(e)
192 RCW 64.90.225(1)(g)



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- ¹⁹³ RCW 64.90.245(2); RCW 64.90.245(14)
- ¹⁹⁴ RCW 64.90.200(2)
- ¹⁹⁵ RCW 64.90.245(7)
- ¹⁹⁶ RCW 64.90.245(14)
- ¹⁹⁷ RCW 64.90.245(5)
- ¹⁹⁸ RCW 64.90.245(14)
- ¹⁹⁹ RCW 64.90.245(3)
- ²⁰⁰ RCW 64.90.245(7)
- ²⁰¹ RCW 64.90.025(5)
- ²⁰² RCW 64.90.020(2)(b)
- ²⁰³ RCW 64.90.025(5)
- ²⁰⁴ RCW 64.90.225(1)(a)
- ²⁰⁵ RCW 64.90.200(1)(b)
- ²⁰⁶ RCW 64.90.230(1)
- ²⁰⁷ RCW 64.90.245(14)
- ²⁰⁸ RCW 64.90.200(1)(a)
- ²⁰⁹ RCW 64.90.245(3)
- ²¹⁰ RCW 58.17.165
- ²¹¹ RCW 64.90.245(6)(b)
- ²¹² RCW 64.90.245(14)
- ²¹³ RCW 64.90.245(13)
- ²¹⁴ RCW 64.90.245(14)
- ²¹⁵ RCW 64.90.245(5) & (6)(b) & RCW 64.90.245(13) & RCW 64.90.245(14)
- ²¹⁶ RCW 64.90.245(14)
- ²¹⁷ RCW 64.90.245(5)
- ²¹⁸ RCW 64.90.245(5)
- ²¹⁹ RCW 64.90.245(8)(b)
- ²²⁰ RCW 64.90.225(1)(b)
- ²²¹ RCW 64.90.245(8)(h) does require the map to show the location and dimensions of recorded appurtenant easements and unrecorded easements “to the extent feasible.” Note that this is not required for a plat community (RCW 64.90.245(2)), but title insurers may still want to see the location of recorded easements that might not have already been required in the platting process.
- ²²² RCW 64.90.245(k)
- ²²³ RCW 64.90.245(8)(e)
- ²²⁴ RCW 64.90.225(1)(g) & RCW 64.90.225(1)(h)(i)
- ²²⁵ RCW 64.90.245(8)(e)
- ²²⁶ RCW 64.90.225(1)(g) & RCW 64.90.225(1)(h)(i)



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- ²²⁷ RCW 64.90.245(8)(d)
- ²²⁸ RCW 64.90.225(1)(g) & RCW 64.90.225(1)(h)(i)
- ²²⁹ RCW 64.90.225(1)(e)
- ²³⁰ RCW 64.90.225(1)(g), (h) and (i)
- ²³¹ RCW 64.90.245(8)(d)
- ²³² RCW 64.90.245(8)(b)
- ²³³ RCW 64.90.225(1)(b)
- ²³⁴ RCW 64.90.245(8)(h)
- ²³⁵ RCW 64.90.245(8)(d)
- ²³⁶ RCW 64.90.245(8)(e)
- ²³⁷ RCW 64.90.245(10)
- ²³⁸ RCW 64.90.245(8)(e)
- ²³⁹ In general, RCW 64.90.225(1)(g) describes the criteria for this analysis
- ²⁴⁰ RCW 64.90.245(10) & RCW 64.90.250(3)
- ²⁴¹ RCW 64.90.245(8)(l)
- ²⁴² RCW 64.90.245(8)(f)
- ²⁴³ RCW 64.90.250(4) & RCW 64.34.236(4)
- ²⁴⁴ RCW 64.90.245(8)(o)
- ²⁴⁵ RCW 64.90.245(8)(j)
- ²⁴⁶ RCW 64.90.245(8)(o)
- ²⁴⁷ RCW 64.90.245(8)(n)
- ²⁴⁸ RCW 64.90.240(2)(b) & (3)
- ²⁴⁹ RCW 64.90.010(20)(b) & (e)
- ²⁵⁰ RCW 64.90.240(1)(b) & (2a)
- ²⁵¹ RCW 64.90.245(8)(g)
- ²⁵² RCW 64.90.245(8)(h)
- ²⁵³ Required for title insurance purposes, although RCW 64.90.245(8)(m) would also expressly require it for principal common amenities.
- ²⁵⁴ RCW 64.90.245(8)(h)
- ²⁵⁵ RCW 64.90.245(8)(m), as listed in the POS pursuant to RCW 64.90.610(1)(k). (NOTE: for a plat community, the information can be on a map attached to the declaration, but could be on the plat survey.)
- ²⁵⁶ RCW 64.90.245(9)
- ²⁵⁷ RCW 64.90.245(9)
- ²⁵⁸ RCW 64.90.245(8)(o)
- ²⁵⁹ RCW 64.90.245
- ²⁶⁰ RCW 64.90.245(15)
- ²⁶¹ RCW 64.90.225(1)(d)



²⁶² RCW 64.90.245(8)(j)
²⁶³ RCW 64.90.225(8)(j)
²⁶⁴ RCW 64.90.245(8)(n)
²⁶⁵ RCW 64.90.245(4)
²⁶⁶ RCW 64.90.250
²⁶⁷ RCW 64.90.250
²⁶⁸ RCW 64.90.250
²⁶⁹ RCW 64.90.285(10)
²⁷⁰ RCW 64.90.285(11)
²⁷¹ RCW 64.90.250
²⁷² RCW 64.90.240(3)
²⁷³ RCW 64.90.265(4)
²⁷⁴ RCW 64.90.260(3)(a) & (b)
²⁷⁵ RCW 64.90.030
²⁷⁶ RCW 64.90.465
²⁷⁷ RCW 64.90.245(7)
²⁷⁸ RCW 64.90.245(4)
²⁷⁹ RCW 64.90.245(4)

