

**WUCIOA**  
**Washington Uniform**  
**Common Interest Ownership**  
**Act**

**2018 WLTA**  
**Seminars**

Yakima 9-20-2018  
Lynnwood 10-20-2018



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# COMMON INTEREST COMMUNITIES

- ❖ Started process in 2009
- ❖ Why a new statute?
  - ❖ Clarify ambiguities under WCA (also based on "uniform" act)
  - ❖ Attempt to extend condo warranties to other subdivisions
  - ❖ Management of HOA

# WHO IS AFFECTED?

## ❖ Who were interested parties?

1. Developer
2. Lender
3. Owner association
4. Consumer:
  - ❖ Buyer
  - ❖ Individual unit owner

# WHO IS AFFECTED?

- ❖ Affects:
  - ❖ Developers
  - ❖ Unit owners
  - ❖ Buyers
  - ❖ Sellers
  - ❖ HOAs
  - ❖ Lenders
  - ❖ Creditors
  - ❖ Title companies
  - ❖ Attorneys & surveyors who represent any of the above

# WHAT DOES WUCIOA DO?

- ❖ Creation of CIC
  - ❖ Declaration
  - ❖ Map
- ❖ Alteration (units, CE)
- ❖ Sale/encumbrance of common elements
- ❖ Amendment
- ❖ Termination

These impact title

# WHAT DOES WUCIOA DO?

- ❖ Operation (management) of HOA
  - ❖ Governance/rights of owners
  - ❖ Administration
  - ❖ Enforcement of declaration (CCRs) & rules
  - ❖ Meetings, notices, quorum requirements, voting procedures, elections

These no direct impact on title or escrow

# WHAT DOES WUCIOA DO?

- ❖ Developer control
- ❖ Warranties (condos)
- ❖ Sale of units
  - ❖ Disclosures to purchasers
  - ❖ Public offering statement or
  - ❖ Resale certificate
  - ❖ Earnest \$\$\$ in escrow

These no direct impact on title

# BENEFITS?

Title company perspective:

- ❖ Reduce potential for claims
- ❖ Many examples of problems with condos
  - ❖ Development rights
  - ❖ Parking spaces
- ❖ Is it the "uniform" act?
- ❖ Consistency - but is there?

Time will tell



# COMMON INTEREST COMMUNITIES

- ❖ What is a CIC?
- ❖ How are they created?
- ❖ New procedures
- ❖ Checklists
- ❖ Survey guidelines

## TYPES OF CICs

1. Condos
2. Cooperatives
3. Plat communities
4. Miscellaneous communities

## TYPES OF CICs

The national uniform act has "planned communities" but we have:

- ❖ Plat communities
- ❖ Miscellaneous Communities

## TYPES OF CICs

All condos are CICs

All cooperatives are CICs

But not all flats are CICs

HOWEVER:

Assume a flat is a CIC

# Checklists

- ❖ Be familiar with title company guidelines
- ❖ Always use the checklist
- ❖ Try to review before parties sign
- ❖ Or, at least before recording!
- ❖ Review with state title underwriter
- ❖ Communication - developer, attorney, surveyor & title company

# STRUCTURE OF WUCIOA

- ❖ Article 1 - general provisions  
(applicability, interpretation, etc.)

- No variation of procedures
- No waiver of rights

*except as permitted by statute*

- ❖ Article 2 - creation of CIC
- ❖ Article 3 - HOA management
- ❖ Article 4 - protection of purchasers

# DEFINITIONS

Common Interest Community:

Any subdivision where a  
lot/unit owner is

- ❖ *obligated to share expenses*
- ❖ *related to other property*
- ❖ *by virtue of that ownership*

# DEFINITIONS

## Common Interest Community:

- ❖ Obligation is involuntary
- ❖ It is NOT based on:
  - ❖ Existence of common elements
  - ❖ Mere shared ownership of the other land
  - ❖ Membership in an HOA



# DEFINITIONS

## Common Interest Community:

- ❖ Statute states what applies to pre-existing CICs
- ❖ But only condos pre-existing

### Question:

- ❖ applicability to pre-existing subdivisions that are NOW defined as CICs?

# DEFINITIONS

BOTH must be described:

- ❖ The obligated land and
- ❖ The benefitted land

# DEFINITIONS

- ❖ Declaration - all CICs
  - ❖ Controlling document
  - ❖ Plat CCRs = "declaration"
  - ❖ Contents set by statute
  - ❖ Cannot vary except as provided by statute

# DEFINITIONS

- ❖ Map (applies to all CICs)
  - ❖ Survey for condos
  - ❖ Ch 58.17 RCW survey for plats
  - ❖ Survey for miscellaneous
  - ❖ MAY BE survey for coop

# DEFINITIONS

## MAP for Cooperative

- ❖ Can be a survey
- ❖ Survey (of unit boundaries) best for title insurance (if insurable)
- ❖ If not a survey - still must be certified by declarant as to unit boundaries

# DEFINITIONS

## Condominium

Same as before:

- ❖ Units
- ❖ Common elements
- ❖ CE owned by owners as tenants in common

# DEFINITIONS

## Condominium

Units typically in multi-unit  
building

Boundaries are "walls, floors,  
ceilings"

BUT

# DEFINITIONS

## Condominium

Unit can be "airspace"

If so, boundaries are "planes in space" (or a combination)



# DEFINITIONS

## Cooperative

All property owned by  
association

Unit owners:

- ❖ Own share in association
- ❖ Lease the unit

# DEFINITIONS

## Cooperative

Unit owner interest is

Personal property

SO

- ❖ Ability to mortgage is limited
- ❖ Impacts availability of title insurance

# DEFINITIONS

Cooperative

BUT

The leasehold interest **MAY**  
BE insurable

With exceptions

Guidelines to come

# DEFINITIONS

Cooperative

Like a condo -

Units typically in multi-unit  
building

Boundaries are "walls, floors,  
ceilings"

BUT

# DEFINITIONS

Cooperative

Like a condo

Unit can be "airspace"

If so, boundaries are "planes in space" (or a combination)

# DEFINITIONS

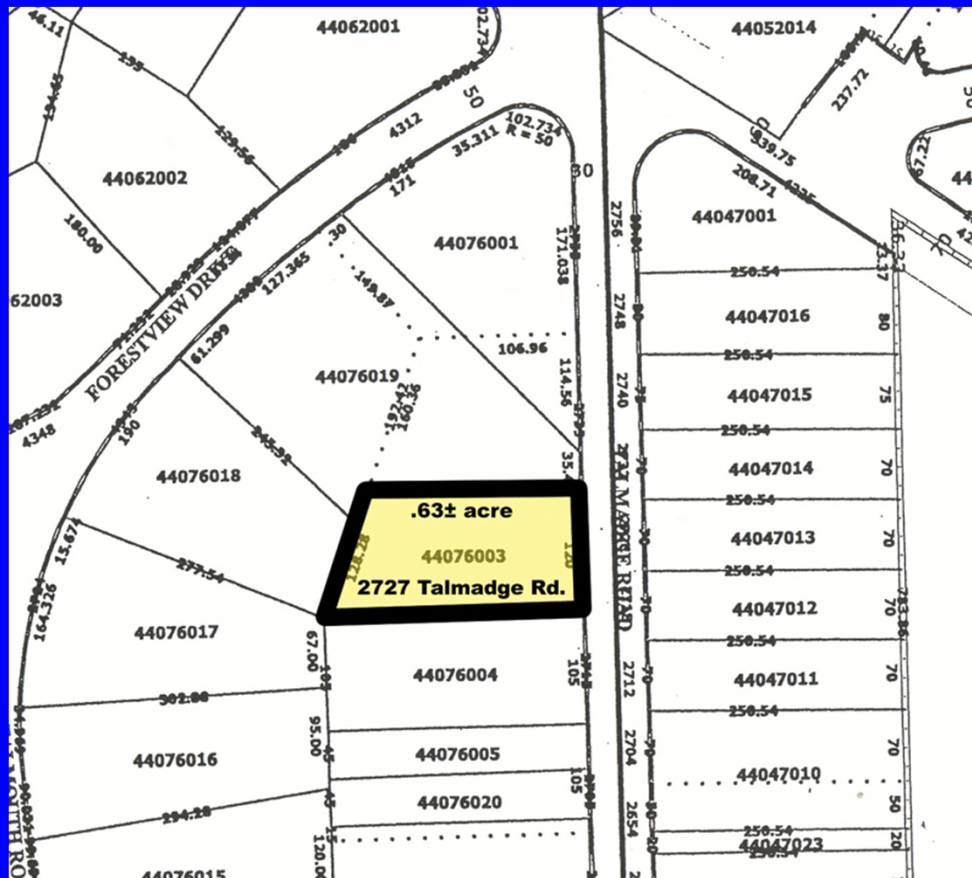
## Plat Community

Any plat under Ch 58.17  
RCW

INTENT: Not to mess with  
existing subdivision law as it  
pertains to traditional plats  
(including short plats, BSP, etc.)

# DEFINITIONS

## Plat Community



# DEFINITIONS

## Plat Community

Lots owned by "unit" owners

All other property is either:

- ❖ Owned by HOA or
- ❖ Owned by lot owners as tenants in common

(this differs from UCIOA)



# DEFINITIONS

## Plat Community

Pretty traditional - BUT

If there are shared expense obligations

For private roads, drainage tracts, parks, greenbelts, etc.

# DEFINITIONS

Plat Community

Then the plat is also a  
Plat community subject to  
WUCIOA  
(some exemptions)

# DEFINITIONS

## QUESTION:

What about Division II of  
plat recorded after July  
1, 2018?

If subject to same CCRs  
Apply WUCIOA??

## DEFINITIONS

Re-write CCRs?

Require POS or  
Resale certificate?

Unknown...

# DEFINITIONS

## Miscellaneous Community

Anything that is not

A condo, a cooperative or a plat  
community

BUT

The subdivision *cannot be*  
inconsistent with Ch 58.17 RCW

# DEFINITIONS

## Miscellaneous Community

- ❖ Refer any miscellaneous community to underwriting
- ❖ May look like a condo - but trying to avoid warranty liabilities
- ❖ May look like a plat
- ❖ May be subject to subdivision challenge

# DEFINITIONS

## Miscellaneous Community

May not want to issue a  
subdivision endorsement or  
an ALTA 4 or 5 endorsement

# SOME EXEMPTIONS

Common Interest Community

Voluntary

Examples:

- ❖ shared driveway/utilities
- ❖ wellsite
- ❖ party wall



# SOME EXEMPTIONS

## Common Interest Community

Some exceptions as to parts of  
WUCIOA:

- ❖ Small plat projects (12 or fewer units)
- ❖ Non-residential
- ❖ Mixed use

# SOME EXEMPTIONS

Small projects:

Plats & Miscellaneous only (no exemption for condos or coops)

But NOT absolute

There are conditions

# SMALL CIC EXEMPTION

- (1) the plat is NOT subject to development rights.

(Thus, a CIC plat is subject to WUCIOA if it is subject to any development right, no matter how many units/lots.)

AND

# SMALL CIC EXEMPTION

(2) the plat contains no more than 12 lots

AND

# SMALL CIC EXEMPTION

(3) the declaration/CCRs provides that the average annual assessment of all RESIDENTIAL lots may not exceed \$300.

(Exclusive of optional user fees and insurance premiums paid by the owners association, and subject to inflation)

AND

## SMALL CIC EXEMPTION

(4) the declaration/CCRs  
*does not* state that it is  
subject to all of WUCIOA

# NON-RESIDENTIAL EXEMPTION

Non-Residential  
Exclusively (all units)  
(Not applicable to  
condos)

# NON-RESIDENTIAL EXEMPTION

This is optional

Default is exempt

Unless:

- ❖ Declaration provides all of some of WUCIOA applies



# NON-RESIDENTIAL EXEMPTION

## QUESTION:

If declaration is silent as to use,  
can we tell if it's non-residential?

Presumably declaration will

- ❖ State that all units are non-residential, and
- ❖ Claim exemption from WUCIOA
- ❖ Review by underwriting

# LEGAL DESCRIPTIONS

- ❖ All land must be described
- ❖ If future phases (OR PLAT DIVISIONS) can be added, that *right* must be described
- ❖ Easements appurtenant must be on map (statute) and in declaration (for title insurance purposes)

# LEGAL DESCRIPTIONS

- ❖ If a road is to be dedicated or conveyed as part of the development
- ❖ It should be done FIRST
- ❖ Or excluded from the CIC description before recording

# COMMON ELEMENTS

- ❖ In a condo - everything except units; owned by unit owners
- ❖ In a cooperative - all of the property; owned by coop corporation, proprietary lease to unit owners
- ❖ In a plat or miscellaneous community, common tracts or lots; owned by association or unit owners as TIC

# COMMON ELEMENTS

## IN A PLAT:

- ❖ Common areas can be owned by HOA or unit owners as TIC
- ❖ Usual options:
  1. Map or CCRs says common tracts will be deeded to HOA
  2. Map or CCRs says common tracts "dedicated to lot owners as TIC
  3. Map and CCRs silent as to ownership intent

# COMMON ELEMENTS

## IN A PLAT:

- ❖ BUT: how often does the developer follow through with a deed?
- ❖ NOW:
  - ❖ EXCEPT as otherwise provided in CCRs or the MAP
  - ❖ If not dedicated to owners ,or
  - ❖ deeded to HOA at time of first lot sale
  - ❖ Then "deemed" conveyed to HOA

# COMMON ELEMENTS

IN A PLAT:

- ❖ Is the "deemed" conveyed sufficient for title insurance?
  - ❖ Now?
  - ❖ In 20 years?
- ❖ Contact your underwriter

# CONVEYANCE or ENCUMBRANCE OF COMMON ELEMENTS

- ❖ Not just condos
- ❖ Also PLATS
- ❖ Procedures now established  
- same as for condos



# UNIT BOUNDARIES

For plats:

Typical - VERTICAL only

"from the center of the earth to the heavens above"

# UNIT BOUNDARIES

For condos & cooperatives:  
The default unit boundary is  
typical for a condo unit =  
interior surfaces of walls,  
floors and ceilings

# UNIT BOUNDARIES

For condos & cooperatives:  
But boundaries can be defined  
as planes in space  
Upper & Lower  
Creating "airspace" unit

# UNIT BOUNDARIES

Changes in unit condo &  
cooperative boundaries

- ❖ Three different statutes deal with:
  - ❖ Apertures between units
  - ❖ combination of entire units
  - ❖ combination of portions of units
  - ❖ subdivision

# UNIT BOUNDARIES

Changes in unit condo & cooperative boundaries

- ❖ Formal, with recorded amendments
- ❖ If not - watch for clues
- ❖ Difficult to identify
- ❖ Review amendments for compliance

# UNIT BOUNDARIES

Changes in unit plat community boundaries

- ❖ Hey - it's a boundary line adjustment
- ❖ BUT - approval procedures must be followed

# UNIT BOUNDARIES

- ❖ Changes in unit miscellaneous community boundaries
- ❖ ? Is it a boundary line adjustment?
- ❖ BUT - approval procedures must still be followed
- ❖ Probably subdivision issues

# PUBLIC OFFERING STATEMENT

- ❖ Required for new projects
- ❖ Not needed for title company review
- ❖ Except to see if it describes "*principal common amenities*" that must be shown on map
- ❖ Or any discrepancies with declaration or map



# RESALE CERTIFICATE

- ❖ Required for resales
- ❖ Good to determine HOA assessments
- ❖ Required for new CICs
- ❖ But unclear about lots in post-WUCIOA divisions of pre-July 1, 2018, plats
- ❖ Do same CCRs qualify as new CIC for resales of earlier plat divisions?

MISCELLANEOUS  
COMMUNITY MAP

PLAT COMMUNITY MAP

IN DECLARATION

Optional in declaration, BUT STILL  
must be survey & certified by surveyor

# LIMITED COMMON ELEMENTS

- ❖ Still appropriate to a condo or cooperative
- ❖ But can be applicable to a plat community (Q = is an easement tract in a plat or short plat also an LCE?)
- ❖ And should be used for a miscellaneous community

# LIMITED COMMON ELEMENTS

- ❖ Must be created AND allocated in the declaration
- ❖ Cannot be "created" for allocation later
- ❖ Cannot be allocated:
  - ❖ in a later deed
  - ❖ By reference to the map

# LIMITED COMMON ELEMENTS

- ❖ CAN be allocated in declaration to declarant owned unit
- ❖ For re-allocation pursuant to development right
- ❖ CAUTION - what if not re-allocated?
- ❖ Best to remain common element subject to right to create and allocate by amendment
- ❖ Caution on plats

# LIMITED COMMON ELEMENTS

- ❖ Portions of common elements can be:
  - ❖ identified for converting to LCE
  - ❖ by amendment
  - ❖ pursuant to development right

# LIMITED COMMON ELEMENTS

- ❖ Avoid *avoid* avoid including LCE in legal descriptions
- ❖ Must be in ONE PLACE - the declaration (or amendment)
- ❖ Re-allocation between owners
- ❖ only by amendment to declaration
- ❖ No "deed" of LCE to another owner
- ❖ Can still be compensation

# PRINCIPAL COMMON AMENITIES

- ❖ What are they?
- ❖ Who knows?
- ❖ Not in declaration but in  
POS
- ❖ Must be on map



# CONVERSION BUILDINGS

- ❖ This still applies to condos
- ❖ Also applies to cooperatives
- ❖ May apply to miscellaneous community
- ❖ Not likely in a plat community

# CONVERSION BUILDINGS

- ❖ Must give notice to tenant -
- ❖ Otherwise tenant may have "defense to an action for possession"
- ❖ Must offer to sell to tenant
- ❖ Title company must confirm either not a conversion, or there are no rights of tenants to unit to be insured

# DEVELOPMENT RIGHTS

Include:

- ❖ ADD land TO a CIC
- ❖ ADD improvements TO a CIC
- ❖ Create units WITHIN a CIC
- ❖ Create common elements within a CIC
- ❖ Create LCE within a CIC
- ❖ Subdivide or combine units/lots
- ❖ Withdraw land FROM a CIC

# DEVELOPMENT RIGHTS

- ❖ NOT just condos
  - ❖ Carve units out of common elements
  - ❖ Add "Phase II" land with new units to condo
- ❖ Applies to PLATS also
  - ❖ Subdivide a lot owned by developer
  - ❖ Add "Division 2" land with units/lots  
(Subject to same CCRs)

# DEVELOPMENT RIGHTS

For a plat

- ❖ Even though added land is new plat, or
- ❖ subdivided lot is a re-plat or separate plat
- ❖ These are still development rights

IF THEY SHARE THE SAME  
DECLARATION

# DEVELOPMENT RIGHTS

For a plat

Include the right in the  
declaration

But not necessarily on the  
map

# DEVELOPMENT RIGHTS

In the declaration:

- ❖ Describe the right
- ❖ Affect on existing units
- ❖ (formula for reallocation of allocated interests)
- ❖ Legal description of affected land (OPTIONAL)

# DEVELOPMENT RIGHTS

In the declaration:

- ❖ Either legal description(s) in the declaration & order in which they can be added; OR
- ❖ A statement that no assurances are given as to the affected land or order in which the rights are exercised



# DEVELOPMENT RIGHTS

On the map:

Show and label only if  
affected land is described in  
the declaration

# DEVELOPMENT RIGHTS

On the map:

LABEL Examples:

- ❖ Right to add units that will affect allocated interests
- ❖ Land that may be withdrawn
- ❖ Improvements (if shown): "MUST BE" built or "NEED NOT be" built
- ❖ Leasehold land (not optional)

# DEVELOPMENT RIGHTS

Still the most likely to result in  
claims

Always have underwriting  
review them BEFORE insuring  
new CIC

And BEFORE insuring exercise  
of rights

WUCIOA

is NEW

Use checklists

Don't be afraid to ask questions