
HOUSE BILL 2423

State of Washington

64th Legislature

2016 Regular Session

By Representatives Kilduff, Wylie, Muri, Harris, Stokesbary, and Moeller

1 AN ACT Relating to the creation of an office of the homeowners'
2 association ombuds; reenacting and amending RCW 64.38.010 and
3 43.84.092; and adding new sections to chapter 64.38 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 64.38.010 and 2011 c 189 s 7 are each reenacted and
6 amended to read as follows:

7 For purposes of this chapter:

8 (1) "Assessment" means all sums chargeable to an owner by an
9 association in accordance with RCW 64.38.020.

10 (2) "Baseline funding plan" means establishing a reserve funding
11 goal of maintaining a reserve account balance above zero dollars
12 throughout the thirty-year study period described under RCW
13 64.38.065.

14 (3) "Board of directors" or "board" means the body, regardless of
15 name, with primary authority to manage the affairs of the
16 association.

17 (4) "Common areas" means property owned, or otherwise maintained,
18 repaired or administered by the association.

19 (5) "Common expense" means the costs incurred by the association
20 to exercise any of the powers provided for in this chapter.

1 (6) "Contribution rate" means, in a reserve study as described in
2 RCW (~~64.34.380~~) 64.38.065, the amount contributed to the reserve
3 account so that the association will have cash reserves to pay major
4 maintenance, repair, or replacement costs without the need of a
5 special assessment.

6 (7) "Effective age" means the difference between the estimated
7 useful life and remaining useful life.

8 (8) "Full funding plan" means setting a reserve funding goal of
9 achieving one hundred percent fully funded reserves by the end of the
10 thirty-year study period described under RCW 64.38.065, in which the
11 reserve account balance equals the sum of the deteriorated portion of
12 all reserve components.

13 (9) "Fully funded balance" means the current value of the
14 deteriorated portion, not the total replacement value, of all the
15 reserve components. The fully funded balance for each reserve
16 component is calculated by multiplying the current replacement cost
17 of the reserve component by its effective age, then dividing the
18 result by the reserve component's useful life. The sum total of all
19 reserve components' fully funded balances is the association's fully
20 funded balance.

21 (10) "Governing documents" means the articles of incorporation,
22 bylaws, plat, declaration of covenants, conditions, and restrictions,
23 rules and regulations of the association, or other written instrument
24 by which the association has the authority to exercise any of the
25 powers provided for in this chapter or to manage, maintain, or
26 otherwise affect the property under its jurisdiction.

27 (11) "Homeowners' association" or "association" means a
28 corporation, unincorporated association, or other legal entity, each
29 member of which is an owner of residential real property located
30 within the association's jurisdiction, as described in the governing
31 documents, and by virtue of membership or ownership of property is
32 obligated to pay real property taxes, insurance premiums, maintenance
33 costs, or for improvement of real property other than that which is
34 owned by the member. "Homeowners' association" does not mean an
35 association created under chapter 64.32 or 64.34 RCW.

36 (12) "Lot" means a physical portion of the real property located
37 within an association's jurisdiction designated for separate
38 ownership.

39 (13) "Owner" means the owner of a lot, but does not include a
40 person who has an interest in a lot solely as security for an

1 obligation. "Owner" also means the vendee, not the vendor, of a lot
2 under a real estate contract.

3 (14) "Remaining useful life" means the estimated time, in years,
4 before a reserve component will require major maintenance, repair, or
5 replacement to perform its intended function.

6 (15) "Replacement cost" means the current cost of replacing,
7 repairing, or restoring a reserve component to its original
8 functional condition.

9 (16) "Reserve component" means a common element whose cost of
10 maintenance, repair, or replacement is infrequent, significant, and
11 impractical to include in an annual budget.

12 (17) "Reserve study professional" means an independent person who
13 is suitably qualified by knowledge, skill, experience, training, or
14 education to prepare a reserve study in accordance with RCW
15 (~~64.34.380 and 64.34.382~~) 64.38.065 and 64.38.070.

16 (18) "Residential real property" means any real property, the use
17 of which is limited by law, covenant or otherwise to primarily
18 residential or recreational purposes.

19 (19) "Significant assets" means that the current replacement
20 value of the major reserve components is seventy-five percent or more
21 of the gross budget of the association, excluding the association's
22 reserve account funds.

23 (20) "Useful life" means the estimated time, between years, that
24 major maintenance, repair, or replacement is estimated to occur.

25 (21) "Office" means the office of the homeowners' association
26 ombuds.

27 (22) "Ombuds" means the homeowners' association ombuds.

28 NEW SECTION. Sec. 2. A new section is added to chapter 64.38
29 RCW to read as follows:

30 (1) There is established within the office of the attorney
31 general an office of the homeowners' association ombuds.

32 (2) The attorney general must appoint the ombuds, consistent with
33 the qualifications for the ombuds set forth in section 3 of this act.

34 (3) The ombuds must be the head of the office and is charged with
35 managing the office consistent with the powers and duties vested in
36 the ombuds under section 4 of this act within the amounts
37 appropriated for the office.

38 (4) The ombuds must serve at the pleasure of the attorney
39 general.

1 (5) A vacancy in the ombuds position must be filled in the same
2 manner as the original appointment.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.38
4 RCW to read as follows:

5 The ombuds:

6 (1) Must be a member in good standing of the bar of this state;

7 (2) Must have at least five years of experience in the practice
8 of law in this state;

9 (3) Must have experience in real estate law, including
10 homeowners' association law;

11 (4) Must have experience in conflict and alternative dispute
12 resolution;

13 (5) May not engage in any other business or profession that
14 conflicts with the powers and duties of the position or the office;
15 and

16 (6) Must comply with all restrictions on political activity
17 applicable to office of the attorney general employees.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38
19 RCW to read as follows:

20 The ombuds:

21 (1) Must contact homeowners' associations, the board of directors
22 of homeowners' associations, individual owners in homeowners'
23 associations, and other interested parties to inform them of the
24 services available through the office. In addition to any other
25 method used to publicize the office's services, the ombuds must
26 maintain a web site containing information about the office, contact
27 information, the services available through the office, any
28 information required to be placed on the web site in accordance with
29 this chapter, and any other information deemed appropriate by the
30 ombuds;

31 (2) Must assist homeowners' associations, the board of directors
32 of homeowners' associations, individual owners in homeowners'
33 associations, and other interested parties in understanding their
34 rights and responsibilities and the processes available to them
35 according to the law, rules, regulations, and documents governing
36 their respective homeowners' associations. The ombuds is not the
37 attorney for a homeowners' association, the board of directors of a
38 homeowners' association, an individual owner in a homeowners'

1 association, or another interested party. An attorney-client
2 relationship is not implied or established by the ombuds'
3 communication with such persons, and the ombuds may not act as or
4 appear to act as an attorney in a legal action brought by such
5 persons;

6 (3) Must organize and conduct meetings to educate homeowners'
7 associations, the board of directors of homeowners' associations,
8 individual owners in homeowners' associations, and other interested
9 parties about their rights and responsibilities and the processes
10 available to them according to the law, rules, regulations, and
11 documents governing their respective homeowners' association;

12 (4) Must prepare and publish educational and reference materials
13 about homeowners' associations and to make these resources available
14 in print and on the office's web site. The materials about
15 homeowners' associations must include general information about the
16 roles, rights, and responsibilities of the various parties,
17 suggestions for the orderly operation of the homeowners' association,
18 mechanisms for internal dispute resolution, or any other information
19 deemed appropriate by the ombuds;

20 (5) Must develop and publicize procedures intended to result in
21 fair elections for members and officers of a homeowners' association;

22 (6) Must provide monitors and vote counting services to
23 homeowners' associations, intended to result in fair elections for
24 members and officers of a homeowners' association, when fifteen
25 percent of the total voting interests of a homeowners' association,
26 or six owners, whichever is greater, petition the ombuds to do so;

27 (7) Must provide meetings, mediation, or other forms of
28 alternative dispute resolution as requested by homeowners'
29 associations, the board of directors of homeowners' associations,
30 individual owners in homeowners' associations, or other interested
31 parties;

32 (8) May receive complaints from homeowners' associations, the
33 board of directors of homeowners' associations, individual owners in
34 homeowners' associations, or other interested parties regarding
35 potential violations of the law, rules, regulations, or documents
36 governing their respective homeowners' associations;

37 (9) Must investigate any complaint received and, if meritorious
38 and appropriate, provide meetings, mediation, or other forms of
39 alternative dispute resolution to those parties involved to assist in
40 the resolution of the complaint;

1 (10) May refer meritorious violations of existing law to the
2 attorney general or other appropriate law enforcement agency for
3 prosecution;

4 (11) May subpoena witnesses, compel their attendance and
5 testimony, administer oaths and affirmations, take evidence, and
6 require by subpoena the production of books, papers, records, or
7 other evidence needed for the exercise of the powers or the
8 performance of the duties vested in the ombuds under this section.
9 The power granted in this subsection may also be exercised by any
10 other employee of the office who is a member in good standing of the
11 bar of this state;

12 (12) Must establish and publish, in print and on the office's web
13 site, procedural rules for meetings, mediation, or other forms of
14 alternative dispute resolution organized under this section;

15 (13) Must establish and publish, in print and on the office's web
16 site, procedures and forms for accepting complaints from homeowners'
17 associations, the board of directors of homeowners' associations,
18 individual owners in homeowners' associations, or other interested
19 parties regarding potential violations of the law, rules,
20 regulations, or documents governing their respective homeowners'
21 associations;

22 (14) Must establish an annual fee by rule for: Meetings,
23 mediation, or other forms of alternative dispute resolution; election
24 monitoring; vote counting; or other services as provided by the
25 ombuds under this section. The fee amount must be levied upon each
26 homeowners' association in the state, be adjusted for each
27 homeowners' association based on the size of the homeowners'
28 association, and be deposited in the office of the homeowners'
29 association ombuds account created in section 6 of this act;

30 (15) Must provide an annual report of the office's activities to
31 the governor, attorney general, legislature, and chief justice of the
32 supreme court by December 1st of each year. Each report must contain:

33 (a) Statistics on the number of inquiries and complaints handled
34 by the office;

35 (b) Information on education and outreach efforts by the office;

36 (c) Concerns expressed to the office by homeowners' associations,
37 the board of directors of homeowners' associations, individual owners
38 in homeowners' associations, or other interested parties;

39 (d) Legal developments impacting homeowners' associations;

1 (e) Recommendations for changes to state law or rules of court
2 procedure designed to improve the regulation and operation of
3 homeowners' associations made by the ombuds; and

4 (f) Any other information deemed appropriate by the ombuds;

5 (16) May organize and hold public meetings as necessary to gain a
6 comprehensive sense of the issues facing homeowners' associations in
7 this state. When such meetings are held, (a) at least one meeting
8 must be held in each county at a convenient place within each county,
9 and (b) the information obtained from these meetings must be made a
10 part of the report issued under subsection (15) of this section;

11 (17) May perform any other function necessary to fulfill the
12 powers and duties outlined in this section;

13 (18) Must direct the work of the office consistent with the
14 powers and duties established under this section; and

15 (19) May employ and supervise staff necessary to assist in
16 carrying out the powers and duties established under this section
17 within the amounts appropriated for the office.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.38
19 RCW to read as follows:

20 (1) When a homeowners' association, the board of directors of a
21 homeowners' association, or individual owner in a homeowners'
22 association contacts the office to make an inquiry, request services,
23 or file a complaint, the homeowners' association, board of directors,
24 or individual owner must provide the office with at least the
25 following information regarding the homeowners' association at issue:

26 (a) The name, address, telephone number, and any other contact
27 information for the homeowners' association;

28 (b) The name of the person engaged in property management for the
29 homeowners' association or the name of the person who manages the
30 property at the site of the homeowners' association;

31 (c) The name, mailing address, telephone number, and any other
32 contact information for the board of directors of the homeowners'
33 association;

34 (d) The governing documents for the homeowners' association;

35 (e) The annual budget adopted by the homeowners' association;

36 (f) The number of units in the homeowners' association; and

37 (g) The total annual assessment made by the homeowners'
38 association.

1 (2) The ombuds may waive the requirements under subsection (1) of
2 this section when appropriate.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.38
4 RCW to read as follows:

5 The office of the homeowners' association ombuds account is
6 created in the state treasury. All receipts from fees collected under
7 section 4(14) of this act must be deposited into the account. Moneys
8 in the account may be spent only after appropriation. Expenditures
9 from the account may be used only for the purposes of this act.

10 **Sec. 7.** RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd
11 sp.s. c 12 s 3 are each reenacted and amended to read as follows:

12 (1) All earnings of investments of surplus balances in the state
13 treasury shall be deposited to the treasury income account, which
14 account is hereby established in the state treasury.

15 (2) The treasury income account shall be utilized to pay or
16 receive funds associated with federal programs as required by the
17 federal cash management improvement act of 1990. The treasury income
18 account is subject in all respects to chapter 43.88 RCW, but no
19 appropriation is required for refunds or allocations of interest
20 earnings required by the cash management improvement act. Refunds of
21 interest to the federal treasury required under the cash management
22 improvement act fall under RCW 43.88.180 and shall not require
23 appropriation. The office of financial management shall determine the
24 amounts due to or from the federal government pursuant to the cash
25 management improvement act. The office of financial management may
26 direct transfers of funds between accounts as deemed necessary to
27 implement the provisions of the cash management improvement act, and
28 this subsection. Refunds or allocations shall occur prior to the
29 distributions of earnings set forth in subsection (4) of this
30 section.

31 (3) Except for the provisions of RCW 43.84.160, the treasury
32 income account may be utilized for the payment of purchased banking
33 services on behalf of treasury funds including, but not limited to,
34 depository, safekeeping, and disbursement functions for the state
35 treasury and affected state agencies. The treasury income account is
36 subject in all respects to chapter 43.88 RCW, but no appropriation is
37 required for payments to financial institutions. Payments shall occur

1 prior to distribution of earnings set forth in subsection (4) of this
2 section.

3 (4) Monthly, the state treasurer shall distribute the earnings
4 credited to the treasury income account. The state treasurer shall
5 credit the general fund with all the earnings credited to the
6 treasury income account except:

7 (a) The following accounts and funds shall receive their
8 proportionate share of earnings based upon each account's and fund's
9 average daily balance for the period: The aeronautics account, the
10 aircraft search and rescue account, the Alaskan Way viaduct
11 replacement project account, the brownfield redevelopment trust fund
12 account, the budget stabilization account, the capital vessel
13 replacement account, the capitol building construction account, the
14 Cedar River channel construction and operation account, the Central
15 Washington University capital projects account, the charitable,
16 educational, penal and reformatory institutions account, the cleanup
17 settlement account, the Columbia river basin water supply development
18 account, the Columbia river basin taxable bond water supply
19 development account, the Columbia river basin water supply revenue
20 recovery account, the common school construction fund, the community
21 forest trust account, the connecting Washington account, the county
22 arterial preservation account, the county criminal justice assistance
23 account, the deferred compensation administrative account, the
24 deferred compensation principal account, the department of licensing
25 services account, the department of retirement systems expense
26 account, the developmental disabilities community trust account, the
27 diesel idle reduction account, the drinking water assistance account,
28 the drinking water assistance administrative account, the drinking
29 water assistance repayment account, the Eastern Washington University
30 capital projects account, the Interstate 405 express toll lanes
31 operations account, the education construction fund, the education
32 legacy trust account, the election account, the electric vehicle
33 charging infrastructure account, the energy freedom account, the
34 energy recovery act account, the essential rail assistance account,
35 The Evergreen State College capital projects account, the federal
36 forest revolving account, the ferry bond retirement fund, the freight
37 mobility investment account, the freight mobility multimodal account,
38 the grade crossing protective fund, the public health services
39 account, the high capacity transportation account, the state higher
40 education construction account, the higher education construction

1 account, the highway bond retirement fund, the highway infrastructure
2 account, the highway safety fund, the high occupancy toll lanes
3 operations account, the hospital safety net assessment fund, the
4 industrial insurance premium refund account, the judges' retirement
5 account, the judicial retirement administrative account, the judicial
6 retirement principal account, the local leasehold excise tax account,
7 the local real estate excise tax account, the local sales and use tax
8 account, the marine resources stewardship trust account, the medical
9 aid account, the mobile home park relocation fund, the motor vehicle
10 fund, the motorcycle safety education account, the multimodal
11 transportation account, the multiuse roadway safety account, the
12 municipal criminal justice assistance account, the natural resources
13 deposit account, the office of the homeowners' association ombuds
14 account, the oyster reserve land account, the pension funding
15 stabilization account, the perpetual surveillance and maintenance
16 account, the public employees' retirement system plan 1 account, the
17 public employees' retirement system combined plan 2 and plan 3
18 account, the public facilities construction loan revolving account
19 beginning July 1, 2004, the public health supplemental account, the
20 public works assistance account, the Puget Sound capital construction
21 account, the Puget Sound ferry operations account, the Puget Sound
22 taxpayer accountability account, the real estate appraiser commission
23 account, the recreational vehicle account, the regional mobility
24 grant program account, the resource management cost account, the
25 rural arterial trust account, the rural mobility grant program
26 account, the rural Washington loan fund, the site closure account,
27 the skilled nursing facility safety net trust fund, the small city
28 pavement and sidewalk account, the special category C account, the
29 special wildlife account, the state employees' insurance account, the
30 state employees' insurance reserve account, the state investment
31 board expense account, the state investment board commingled trust
32 fund accounts, the state patrol highway account, the state route
33 number 520 civil penalties account, the state route number 520
34 corridor account, the state wildlife account, the supplemental
35 pension account, the Tacoma Narrows toll bridge account, the
36 teachers' retirement system plan 1 account, the teachers' retirement
37 system combined plan 2 and plan 3 account, the tobacco prevention and
38 control account, the tobacco settlement account, the toll facility
39 bond retirement account, the transportation 2003 account (nickel
40 account), the transportation equipment fund, the transportation fund,

1 the transportation future funding program account, the transportation
2 improvement account, the transportation improvement board bond
3 retirement account, the transportation infrastructure account, the
4 transportation partnership account, the traumatic brain injury
5 account, the tuition recovery trust fund, the University of
6 Washington bond retirement fund, the University of Washington
7 building account, the volunteer firefighters' and reserve officers'
8 relief and pension principal fund, the volunteer firefighters' and
9 reserve officers' administrative fund, the Washington judicial
10 retirement system account, the Washington law enforcement officers'
11 and firefighters' system plan 1 retirement account, the Washington
12 law enforcement officers' and firefighters' system plan 2 retirement
13 account, the Washington public safety employees' plan 2 retirement
14 account, the Washington school employees' retirement system combined
15 plan 2 and 3 account, the Washington state health insurance pool
16 account, the Washington state patrol retirement account, the
17 Washington State University building account, the Washington State
18 University bond retirement fund, the water pollution control
19 revolving administration account, the water pollution control
20 revolving fund, the Western Washington University capital projects
21 account, the Yakima integrated plan implementation account, the
22 Yakima integrated plan implementation revenue recovery account, and
23 the Yakima integrated plan implementation taxable bond account.
24 Earnings derived from investing balances of the agricultural
25 permanent fund, the normal school permanent fund, the permanent
26 common school fund, the scientific permanent fund, the state
27 university permanent fund, and the state reclamation revolving
28 account shall be allocated to their respective beneficiary accounts.

29 (b) Any state agency that has independent authority over accounts
30 or funds not statutorily required to be held in the state treasury
31 that deposits funds into a fund or account in the state treasury
32 pursuant to an agreement with the office of the state treasurer shall
33 receive its proportionate share of earnings based upon each account's
34 or fund's average daily balance for the period.

35 (5) In conformance with Article II, section 37 of the state
36 Constitution, no treasury accounts or funds shall be allocated
37 earnings without the specific affirmative directive of this section.

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