



CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

MEMO

DATE: August 27, 2020
TO: Snohomish Cascade Homeowners' Association Board
FROM: Terrence A. Leahy, Esq. CCAL
RE: Comments on Draft Declaration, Articles, and Bylaws

COMMENTS ON DECLARATION

INTRODUCTION AND HISTORY, Page 3, First 5 Paragraphs: This memo assumes that the Association first "opts-in" to WUCIOA and approves replacement of the Amending provision of the existing Declaration. *(See further discussion of "opting-in" below.)* Based on that assumption, a different process will be used to approve the new Declaration than the process that is described on Page 3, First 5 Paragraphs, so that part of the new Declaration should be revised accordingly.

Section 3.7 Budgets, Assessments, and Special Assessments: Because this addresses special assessments, Section 7.5 is duplicative and can be deleted.

Section 5.19 Antennas / Satellite Dishes / Solare Panels / Clothes Lines: The phrase "Except as otherwise provided by RCW 64.90.510(3)-(7) or by FCC OTARD rules," should be inserted before the word "Exterior" at the beginning of the sentence, because that statute governs installation of solar panels and that rule governs placement of satellite dishes.

Section 7.4(k)(2) – Nonjudicial Foreclosure: I recommend adding the underlined text and removing the text that is struck through as follows -

7.4.(k)(2) The lien may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. For the purpose of preserving the Association's non-judicial

foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to First American Title Insurance Company or its successors or assigns ("Trustee"), to secure the obligations of each Lot Owner to the Association for the payment of Assessments. Each Lot Owner shall retain the right to possession of its Lot so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Lot, which becomes operative in the case of a default in a Lot Owner's obligation to pay Assessments. The Lots are not used principally for agricultural or farming purposes. If the Association forecloses its lien non-judicially pursuant to this Section 7.4, it shall not be entitled to the lien priority over Mortgages provided in Section 7.4(c)(1) and shall be subject to the limits on deficiency judgments under chapter 61.24 RCW. if the declaration: Contains a grant of the common interest community in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the Owners to the Association for the payment of assessments, contains a power of sale, provides in its terms that the Lot is not used principally for agricultural purposes, and provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The Association or its authorized representative may purchase the Lot at the foreclosure sale and acquire, hold, lease, mortgage, or convey the Lot. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption is eight months.

COMMENTS ON ARTICLES OF INCORPORATION

These Amended and Restated Articles of Incorporation reflect a decision to leave stand most of the contents of the original Articles of Incorporation. Contrast that with the decisions made to replace much of the contents of the original Declaration and Bylaws. Consider likewise replacing the original Articles of Incorporation with a less complex and convoluted form of Articles of Incorporation. I can furnish a sample on request.

COMMENTS ON BYLAWS

Section 4.2 Voting at Member Meetings: Note that the Act provides a variety of methods by which the Members' right to take part in decision making can be exercised, including methods that do not require the holding of a Member Meeting. The Act also provides for giving a proxy that can then be exercised at a meeting by the holder of the proxy. Section 4.2 more narrowly provides for decision making at a Member Meeting and for use of a directed proxy, which is a

proxy in which the proxy holder is required to cast the Owner's vote in the manner stated on the proxy. I recommend that language be added (which Mr. Bastian can do) to expressly permit conducting a vote without a meeting, modeled after contents of the Act which, at RCW 64.90.455(6), states:

(6) Unless prohibited or limited by the declaration or organizational documents, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(a) The association must notify the unit owners that the vote will be taken by ballot.

(b) The notice must state:

(i) The time and date by which a ballot must be delivered to the association to be counted, which may not be fewer than fourteen days after the date of the notice, and which deadline may be extended in accordance with (g) of this subsection;

(ii) The percent of votes necessary to meet the quorum requirements;

(iii) The percent of votes necessary to approve each matter other than election of board members; and

(iv) The time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(c) The association must deliver a ballot to every unit owner with the notice.

(d) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(e) A ballot cast pursuant to this section may be revoked only by actual notice to the association of revocation. The death or disability of a unit owner does not revoke a ballot unless the association has actual notice of the death or disability prior to the date set forth in (b)(i) of this subsection.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(g) If the association does not receive a sufficient number of votes to constitute a quorum or to approve the proposal by the date and time established for return of ballots, the board may extend the deadline for a reasonable period not to exceed eleven months upon further notice to all members in accordance with (b) of this subsection. In that event, all votes previously cast on the proposal must be counted unless subsequently revoked as provided in this section.

(h) A ballot or revocation is not effective until received by the association.

(i) The association must give notice to unit owners of any action taken pursuant to this subsection within a reasonable time after the action is taken.

(j) When an action is taken pursuant to this subsection, a record of the action, including the ballots or a report of the persons appointed to tabulate such ballots, must be kept with the minutes of meetings of the association.

Sections 7.1, 7.2, and 7.3 – Notice of Member Meeting or of Board Meeting: Recommend deleting the words “or occupants of each Lot” from 7.1, 7.2 and 7.3 as the right to attend Member Meetings and to observe Board Meetings is a right extended only to Members of the Association, and not to Lot occupants who are not Members of the Association.

Section 7.8 should be revised to read:

Section 7.8 Timing of Notice of Board Meetings. Except for a meeting called to deal with an emergency or a meeting included in a schedule of meetings given to Owners, notice of Board Meetings must be given at least fourteen (14) days before the Board meeting.

Section 9.4(a)(2) Board Members and Committees: Reference should be changed from RCW 23B.08.300 to chapter 24.06 RCW.

COMMENTS ON PROCESS FOR “OPTING-IN” TO WUCIOA.

I attach to this memo some sample documents. These samples are provided to illustrate a process by which the Association can “opt-in” to WUCIOA, then quasi-simultaneously – via use of a “conditional consent” – replace the Declaration’s Amending Provision with a “new” provision that is modeled after the amendment provisions of WUCIOA.

This “two-steps-in-one” process enables the Association to both come within WUCIOA and begin to take advantage of the fact it has done so, by utilizing WUCIOA’s amending provisions as the means by which the community approves the replacement documents which Mr. Bastian has drafted.

Please note that I include in these sample documents a Q and A that has to do with leasing restrictions. **NOTE:** I do this for the sole purpose of giving you some idea of how a Q and A can be used to anticipate the questions most pressing to members of your community and addressing those questions up front. In the sample provided, the question of central concern for that community was a fear on the part of investor owners that opting into WUCIOA was a conspiracy aimed at stripping them of their right to lease. (Welcome to the 2020s.) By addressing those concerns head on, we got the concern out in the open and onto the table where it could then be “rationally” addressed.

**AMENDMENT TO THE CONDOMINIUM DECLARATION FOR
CASTLETOWNBERE, A CONDOMINIUM
TO “OPT-IN TO WUCIOA”**

ARTICLE 36. APPLICATION OF THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT.

Section 36.1. Purpose. We co-owners of Castletownbere, A Condominium, comprise the membership of the Association which was formed to care for our buildings. Our Association operates under the Horizontal Property Regimes Act (“1963 Law”) and under a condominium declaration that is based on the 1963 Law.

The Washington Uniform Common Interest Ownership Act (“WUCIOA” or “Act”) was enacted in 2018. *64.90 RCW*. The Act was adopted to afford owners a voice in decisions which impacted them.

Most of the Act does not apply to our Association, but RCW 64.90.095 does. RCW 64.90.095 gives our Association a right to change the law that governs its operations. The Act sets out a process by which we can choose to remove the 1963 Law as the statute that governs us, and to replace it with the Act. Exercising this right is called “opting into the Act.”

The Act differs from the 1963 Law in various ways. Because our Declaration and Bylaws were written to conform to the 1963 Law, opting into the Act will result in the Association being governed by a law that differs from what is stated in our Declaration and Bylaws (“governing documents”).

When the Act and the governing documents conflict, the Act supersedes the conflicting provision of the governing documents.

Amending the governing documents to remove conflicting provisions and to replace them with ones that conform to the Act can reduce the risk that a conflicting provision of the governing documents might unintentionally be applied in the operation of the Association.

To reduce that risk, the Act provides two ways of amending the governing documents to replace conflicting provisions with provisions that conform to the Act. The Act permits a declaration to be amended with the approval of at least sixty-seven percent (67%) of the total voting power within the Association. The Act also permits the Board, after notice to the owners, to record a declaration amendment to bring declaration provisions into conformance with provisions of the Act.

By Section 36.2 of this Amendment, we exercise our right to opt-in to the Act.

Section 36.2. Adopting an Amendment to “Opt-In” to the New Law. By this declaration amendment, the Association and its Members exercise the right conferred by RCW 64.90.095 of the Act, and do hereby provide that the Act will, and does now, apply to the Association, regardless of what the 1963 Law provided before the Act was adopted.

Section 36.3 Adopting an Amendment After “Opting-In” to the Act. After this Amendment has been approved and duly recorded in the records of King County, subsequent amendments to the Declaration will be approved as provided by the Section 285 of the Act. Specifically, the Declaration may be amended by the Association Membership by vote or agreement of unit owners to which at least sixty-seven percent of the votes in the Association are allocated. The Declaration may also be amended as provided in RCW 64.90.285(11)(d), which permits the Board, after notice to the Association Membership, to amend the Declaration to effect the removal of language in the Declaration that purports to limit the rights of the Association or its Unit Owners in direct conflict with the Act.

Section 36.5. Limitation Period. In the absence of fraud, any action to challenge the validity of an amendment by the Association under Section(s) 36.2, or 36.3 above, or of any other amendment to the declaration authorized by the governing documents or by applicable law may not be brought more than one year after the amendment is recorded.

**AMENDMENT TO THE CONDOMINIUM DECLARATION FOR
CASTLETOWNBERE, A CONDOMINIUM
TO CONFORM ARTICLE 25 TO WUCIOA**

ARTICLE 25 – AMENDMENTS TO DECLARATION AND SURVEY MAP AND PLANS

25.1 Purpose.

Things change. Here is how the Declaration may be changed to adapt. This states (a) a general rule for the approval threshold that must be met to amend the Declaration, (b) exceptions to that general rule, (c) the steps by which an Amendment is completed, (d) the effects of having completed an Amendment, and (e) the period within which an Amendment may be challenged. A word or phrase appearing in the body of a sentence with the first letter in a word or words capitalized is a defined term. A defined term has the meaning given to it in the glossary found at Section 25.8 below. This Article 25 is intended to simplify the methods by which the Declaration may be changed. Any ambiguity in Article 25 should be resolved by interpreting the ambiguous word or phrase in the way that best advances that stated purpose.

25.2 General Rule.

Except as Otherwise Provided, an Amendment is adopted if approved in the manner set out in Section 25.4 below by at least sixty-seven percent (67%) of the votes in the Association.

25.3 Exceptions.

25.3.1. Fundamental Change. Except as Otherwise Provided, an Amendment that (a) increases the number of Units, or (b) changes (i) the boundaries of a Unit, or (ii) the allocated interests of a Unit, is adopted if approved by at least ninety percent (90%) of the votes in the Association, including the approval of the Owner of each Unit particularly affected.

25.3.2. Land Use Change. An Amendment that is intended to prohibit or materially restrict the uses of units permitted under the applicable zoning ordinances is adopted if approved in the manner set out in Section 25.4 below by at least sixty-seven percent (67%) of the votes in the Association, provided that Reasonable Protection is afforded to a use permitted at the time the Amendment was adopted.

25.3.3. Material Change. Approval of a Material Amendment requires Eligible Mortgagee Consent, in addition to such Owners' approval as is otherwise required by this Article 25. A Material Amendment is deemed Consented to by Eligible Mortgagees if at least fifty-one percent (51%) of the Eligible Mortgagees Consent to the Amendment.

25.3.4. Minor Mistake/Conforming Correction. An Amendment intended solely to correct a Minor Mistake or to make a Conforming Correction is adopted if approved in the manner set out in Section 285(11)(d) of the Act, provided that any such amendment (i) is recorded within five years after the recordation or adoption of the Declaration or Amendment containing the Minor Mistake, and (ii) any such Amendment may not materially reduce what the obligations of the Association would have been if the Minor Mistake had not occurred.

25.4 Steps.

Except as Otherwise Provided, an Amendment is approved in the following manner:

25.4.1. Board Consideration. The Board may consider a possible change(s) to the Declaration and may act to submit a proposed Amendment to Owners for approval.

25.4.2. Notice. Notice of a proposed Amendment shall be given to Owners and, if a Material Amendment, to Eligible Mortgagees, if any, as provided by the Declaration. Notice of a proposed Amendment shall include or be accompanied by the text of the proposed Amendment.

25.4.3. Owner Approval. Except as Otherwise Provided, Owner approval may be given by written consent, by vote at a meeting, by electronic transmission, or by any combination of these methods.

25.4.4. Eligible Mortgagee Consent. An Eligible Mortgagee is deemed to have consented to a proposed Material Amendment if the Eligible Mortgagee either (a) expressly consents to it in writing, or (b) constructively consents to it by not responding within sixty (60) days to a written request for consent, sent by the Association to the Eligible Mortgagee via certified mail, return receipt requested.

25.4.5. Recording the Amendment. Upon obtaining the requisite consents to approve an Amendment, it shall (a) be prepared for recording, (b) be executed by any authorized

Association officer, who must certify in the Amendment that it was properly adopted, and (c) be recorded in the real property records of King County.

25.5 Effect of Amendment.

If an Amendment grants to a person a right, power, or privilege conferred by the Act, then any correlative obligation, liability, or restriction imposed by the Act also applies to the person. If the Declaration requires the approval of an Owner as a condition of its effectiveness, the Amendment is not valid without that approval. If the Declaration requires the Consent of an Eligible Mortgagee as a condition of its effectiveness, a Material Amendment is not binding on the Eligible Mortgagee(s) who did not Consent to the Material Amendment, but it is binding on both the Unit secured by the Mortgage(s) and the Owner of such Unit.

25.6 Validity of Amendment.

In the absence of fraud, any action to challenge the validity of an Amendment may not be brought more than one (1) year after the Amendment is recorded in the County property records.

25.7 Terms Defined.

A word or phrase which appears in the body of a sentence in this Declaration (or in a later amendment) with the first letter in a word capitalized is a defined term. A defined term has the meaning attributed to it in this Section 25.7.

“Act” or **“WUCIOA”** means the Washington Uniform Common Interest Ownership Act, codified at Chapter RCW 64.90, as it may be amended.

“Amendment” means any change to the Declaration, including adding, removing, or modifying restrictions contained in a Declaration.

“Conforming Correction” means an amendment to the Declaration made for the sole purpose of effecting the removal of language in the Declaration that purports to limit the rights of the Association or its Unit Owners in direct conflict with the Act.

“Declaration” means the Condominium Declaration for CASTLETOWNBERE, A CONDOMINIUM, as it has been and may be amended from time to time, and as used in this Article 25, it includes the survey map and plans filed simultaneously with the original recording of the Declaration, and any amendments, corrections, or addenda thereto subsequently recorded.

“Eligible Mortgagee” means a Mortgagee that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees. The request must state the name and address of the Eligible Mortgagee and the Identifying Number or address of the Unit on which it has a Mortgage. **“Mortgage”** means a recorded mortgage, deed of trust or real estate contract. **“Mortgagee”** means any holder, insurer or guarantor of a Mortgage on a Unit.

“Eligible Mortgagee Consent” or **“Consent of an Eligible Mortgagee”** means that an Eligible Mortgagee is deemed to have consented to a proposed Material Amendment if either (a) the Eligible Mortgagee expressly consents to it in writing, or (b) the Eligible Mortgagee’s written refusal to consent is not received by the Association within sixty (60) days after the Association delivers notice of the proposed Amendment to the Eligible Mortgagee by certified mail, return receipt requested, at the address the Eligible Mortgagee had provided to the Association.

“Except as Otherwise Provided” means that a statement in the Declaration that is modified by this phrase operates as stated in the Declaration, except as otherwise specifically provided in the Act.

“Material Amendment,” as used here, means an Amendment that adds, removes, or changes a Declaration provision relating to any of the following:

- (a) Ownership – Specifically, an Amendment that (i) expands or contracts the Condominium, or (ii) converts one classification to another (i.e. Common to Limited to Unit);
- (b) Property Maintenance – Specifically, an Amendment that materially changes rights and responsibilities to maintain, repair, or replace property;
- (c) Funding – Specifically, an Amendment that materially changes (i) insuring obligations of the Association or Owners, (ii) the levy and collection of assessments, (iii) Association lien rights, or (iv) the funding of reserves for property replacement;
- (d) Property Rights – Specifically, an Amendment that materially (i) restricts the right to sell or convey a Unit, (ii) reduces the right to use Common Elements or Limited Common Elements, (iii) restricts the right to lease a Unit beyond those restrictions imposed by the Declaration or imposed by Board exercise of its rule making authority or of other authority conferred on the Board by the Declaration or the Act; and
- (e) Association Operations – Specifically, an Amendment that (i) establishes self-management of the Association (but only if the Declaration required professional management), and (ii) any other Declaration provision that exists for the express benefit of the holders of first Mortgages.

“Minor Mistake” means a mathematical mistake, an inconsistency, a scrivener's error, or an ambiguity in the Declaration with respect to an objectively verifiable fact, including, without limitation, recalculating the undivided interest in the common elements, the liability for common expenses, or the number of votes in the unit owners' association appertaining to a unit.

“Reasonable Protection” means that the person who owns a Unit at the time of recording of an Amendment that imposes a new limitation on the total number of Units that can be leased at the same time, or that requires a new minimum lease term, shall be exempt from application of that new limitation or new minimum, provided that (a) the exemption is personal

to such person and expires upon conveyance of the Unit to a different person, and (b) the exemption is subject to the right conferred upon the Board by Section 510(c) of the Act to impose a restriction upon the total number of Units that can be leased at one time.

SAMPLE - FOR ILLUSTRATIVE PURPOSES ONLY

Step by Step Checklist / Instructions

Step 1: Proposal - Board Deems It “Appropriate” to “Opt-In” to WUCIOA.

- The Board considers information about WUCIOA and its relative merits. The Board determines that it is appropriate to seek owners’ approval of a declaration amendment that would result in the Association “Opting-In” to WUCIOA.

Step 2: Notice – Board Sends Notice of Town Hall Meeting to “Discuss” the “Opt-in” Proposal.

- The Board sets a time for a town hall meeting at which information about “Opting-In” to WUCIOA is presented. Notice of this meeting must be given to Owners at least thirty (30) days before it is held. Text of a proposed declaration amendment by which the Association would “Opt-In” to WUCIOA must be sent with the Notice of this meeting.

Step 3: Discussion – Owners “Discuss” the “Opt-In” Proposal at the Town Hall Meeting.

- The town hall meeting affords an opportunity for the Board to present its proposal that the community “Opt-In” to WUCIOA and for Owners to ask questions and make comments on the proposal and on the contents of the “Opt-In” amendment. WUCIOA envisions this town hall meeting as a forum for distributing and considering information about WUCIOA and about “Opting-In.” No vote is taken at the meeting but handing out ballots to be used in the subsequent mail-in balloting is not prohibited.

Step 4: Balloting – By Balloting Without a Meeting, Owners Approve or Reject the Amendment.

- Following the Town Hall meeting, the Board provides Owners with a “notice in a record containing the proposed amendment,” and with a “ballot to approve or reject the amendment.”

Note about Balloting Without a Meeting: This is “mail in balloting.” Here, the law directs an association to use “mail in balloting,” even if the association’s governing documents do not provide for the use of “mail in balloting.” But the law omits any details about how to conduct a mail-in-ballot, so these instructions furnish details about how the mail-in-balloting will be done.

- The following procedures apply to balloting to determine whether an “Opt-In” Amendment should be approved or rejected:
 - A notice in a record containing the proposed amendment and a ballot to approve or reject the amendment shall be sent not less than fourteen (14), nor more than sixty (60), days before the date set for the counting of the ballots;
 - The notice shall state a deadline by which the completed ballot must be received by the Association; and
 - The written and signed ballots received by the date set for the counting of the ballots shall be tallied.

Note: A copy of this “Notice and Ballot” will be provided for your use.

Step 5: Approval – Provided that At Least 30% of All Owners Participate In the Balloting, the Amendment is Deemed Approved if At Least 67% of Those Participating Vote to Approve It.

- The percentage of votes in the Association participating in the voting process, as determined by the number of ballots cast, must equal or exceed a quorum of thirty percent (30%) of the total votes in the Association;
- The ballots shall be counted and the outcome determined within forty-eight (48) hours of the deadline for return of ballots, provided that this period for counting the ballots may be extended up to an additional forty-eight (48) hours if completing the count within the first forty-eight (48) hours is reasonably impracticable;
- The amendment is deemed approved if at least sixty-seven percent (67%) of the votes cast by such participating owners are cast in favor of the proposed amendment; and
- Notice of the outcome of the balloting shall be sent to Owners within ten (10) days after the ballots have been counted.

Step 6: Completion – Amendment Gets Recorded.

- Once the Amendment is approved, we will send you an “executable” final version of the approved amendment. The appropriate officer(s) will sign it before a notary public, who will then acknowledge it. Then promptly return the signed and notarized original document to our office.
- Once received, our firm will record the original in the county property records. The amendment is deemed “effective” on the date it is recorded.
- We will provide you with a “conformed copy” that includes the recording number for distribution to the Owners for their records.
- We will forward the recorded original document to you after we receive it back from the county.

**NOTICE OF BALLOTING
AND
BALLOT TO APPROVE OR REJECT
THE "WUCIOA OPT-IN" AMENDMENT
TO THE DECLARATION OF CONDOMINIUM
OF THE CASTLETOWNBERE, A CONDOMINIUM**

Instructions

Please vote on the Ballot below and return this completed Ballot to the Castletownbere Condominium Association ("Association"), c/o **[ADDRESS TO BE INSERTED]** by **[DATE]**.

PART ONE – BALLOT TO OPT IN

BALLOT

I am an Owner of the Unit identified below. I received the proposed "WUCIOA OPT-IN" AMENDMENT ("Amendment"). I understand that Ballots will be counted on or after **[INSERT DATE BALLOTS WILL BE TALLIED]** ("Deadline"). I hereby cast the vote of my Unit as follows:

I vote to **APPROVE** the "WUCIOA OPT-IN" Amendment.

or

I vote to **REJECT** the "WUCIOA OPT-IN" Amendment.

Dated _____, 201__.

Owner Signature* _____

Owner Printed Name _____

Unit Address or Unit Number _____

***Note:** A Ballot signed by one the Owners of a Unit is valid for Amendment approval purposes.

[SEE PART TWO – CONDITIONAL CONSENT – ON NEXT PAGE]

Conditional Consent to Replace Article 25

I am the Owner of Unit _____. I have been informed of the following facts.

Facts: Once the Association Membership approves a Declaration Amendment to “opt-in” to WUCIOA as the law that will govern the operation of the Association, then the provisions of WUCIOA will apply to the operation of the Association going forward. One such provision is Section 285(1) of WUCIOA, which provides that the Declaration may be amended by the Association Membership by vote or agreement of unit owners to which at least sixty-seven percent of the votes in the Association are allocated. The risk of inadvertent noncompliance with Section 285 of WUCIOA is reduced if the Association Membership exercises its rights under Section 285 of WUCIOA to amend the Declaration to replace Article 25 of the existing Declaration with a new Article 25 which conforms to WUCIOA. **“Consent”** as used in this Conditional Consent means that this written consent to Amend the Declaration to Replace Article 25 is valid once the Declaration Amendment to “opt-in” to WUCIOA has been approved and recorded in the records of King County.

Consent to Replacement of Article 25: With respect to the proposed replacement of Article 25 with the Proposed Amended Article 25 (the “Change”), by completing and returning this written consent, I do hereby (mark one) [“Consent” if not marked]:

CONSENT TO THE CHANGE (or) **NOT CONSENT TO THE CHANGE**

Owner Signature: _____ Dated: _____
Owner Printed Name: _____

Note 1: A Consent signed by one the Owners of a Unit is valid for Amendment approval purposes.

Note 2: Solely for purposes of receiving Written Consents to the changes described above, the Association waives its right to require that Written Consents be delivered to the Association by hand or by mail. **The Association will here also accept scanned Written Consent Forms that are attached to an email sent to [NAME/EMAIL ADDRESS]**

**NOTICE OF
“WUCIOA OPT-IN”
INFORMATIONAL “TOWN HALL” MEETING**

Please note that an Owners’ Informational Meeting is scheduled to be held on **[DATE AND TIME]**, at **[LOCATION]** at which the Board of Directors of the Castletownbere Condominium Association (“Board”) and the Association’s legal counsel will explain why Owners will later be asked to consider “Opting-In” to the recently enacted Washington Uniform Common Interest Ownership Act (“WUCIOA”).

A draft declaration amendment to “Opt-In” to WUCIOA is enclosed.

[OPTIONAL – INSERT HERE THE BOARD’S NARRATIVE SUMMARY OF WHY IT HAS DECIDED TO ASK THAT OWNERS CONSIDER APPROVING A DECLARATION AMENDMENT “OPTING-IN” TO WUCIOA.]

SAMPLE - FOR ILLUSTRATIVE PURPOSES ONLY



QUESTIONS AND ANSWERS ABOUT “WUCIOA” AND LEASING

By Terry Leahy, J.D., CCAL

Q: What is WUCIOA?

A: WUCIOA is the acronym used to refer to the Washington Uniform Common Interest Ownership Act (*Ch. 64.90 RCW*). But I will simply refer to it here as “the Act.”

Q: Does the Act apply to our Condominium Association?

A: Mostly no. While two provisions in the Act apply to condominiums built before July of 2018, the rest of the Act does not automatically apply to such condominiums. The Act does, though, have a process by which existing condominiums can “opt-in” to the Act if they choose to.

Q: Should Our Condominium Association Consider “Opting-In” to the Act?

A: Yes. I believe your Condominium Association should consider “Opting-In” to the Act. The Act provides a more stable platform for operating a condominium association than the older laws do. And I believe that a condominium association that operates under the Act will generally produce better outcomes for the owners. More on this at the town hall meeting, but the Act also addresses leasing and that is a topic of interest to onsite and offsite owners alike, so I will table my more general comments on the Act for the town hall meeting and turn now to leasing.

Q: Does an Owner Currently Have a Right to Lease Out their Unit?

A: An owner currently has a **conditional** right to lease out their unit.

Q: In What Way is an Owner’s Right to Lease “Conditional”?

A: Each owner co-owns the condominium’s common elements (i.e. building exteriors, building systems, and grounds) in common with all other unit owners. Each owner separately owns their individual unit. Certain legal principles apply to the rights of those who co-own property in common. The core principle is that each co-owner has a co-equal right to use the property for its intended purpose, **limited** only by a duty to refrain from exercising the right in a way that might impair the co-equal use rights of the other co-owners. *Butler v. Craft Eng Constr. Co., Inc.*, 67 Wash.App 684 (1992). And that is the “condition.” The right is **conditioned** upon the duty to exercise the right in a manner that does not impair the uses rights of the other co-owners. Where a use does impair the use rights of other co-owners, that use exceeds the scope of the right. An example will help illustrate the concept.

Five people jointly buy a horse. They co-own the horse in common. Each has a co-equal right to use the horse for its intended purpose. The vet tells them that the horse can only carry two riders at a time. If three try to ride the horse at the same time, the horse will go lame.

Applying the principle to these facts, each co-owner has a **conditional** right to ride the horse. The right is conditioned upon the limitation that only two owners can ride the horse at the same time. If two co-owners are

riding the horse, a third co-owner does not have a right to climb aboard and join them. The third co-owner must wait until at least one of the others dismounts the horse.

Q: What “Condition” Limits the Right of An Owner to Lease Out Their Unit?

A: Applying that principle to the leasing of condominium units, each unit owner has a **conditional** right to lease out their unit **so long as** the total number of units being leased simultaneously does not exceed fifty-percent (50%) of the total number of units. If fifty-percent of the units are currently being leased, the right of other owners to lease out their unit is, by operation of this limitation, suspended until the total number of leased units drops below fifty-percent.

Q: Why is Fifty-Percent the Current Ceiling on the Number of Units that can be Simultaneously Leased?

A: Units in a condominium whose total of leased units exceeds fifty-percent become ineligible to refinance their units and become unable to sell their units to any buyer who intends to borrow a portion of the funds to be used in purchasing the unit. Leasing out a unit when fifty-percent of the units are already being leased out is analogous to climbing on the horse when it already has two riders on its back. In each instance, the attempted exercise of the co-equal right exceeds the scope of the right because it impairs the rights of the other co-owners.

Q: How Does the Act Handle Leasing?

A: The Act handles leasing in two ways. First, the Act permits the Board to enforce the fifty-percent ceiling on leasing units through a rule. Second, the Act confers upon the owners a **conditional** right to set the ceiling at a lower percentage.

Q: What “Condition” Limits the Owners’ Right to Set the Ceiling at a Lower Percentage?

A: The Act imposes three limitations on the Owners’ right to set the ceiling at a lower percentage. First, the limitation must be created by an amendment to the condominium declaration. Second, that amendment to the condominium unit must be approved by **at least** sixty-seven percent (67%) of the total votes in the association. And, third, that amendment must afford “**reasonable protection**” to a used permitted at the time the Amendment was adopted.

Q: In What Ways Might Such A Declaration Amendment Afford “Reasonable Protection” to the Leasing Permitted at the Time the Amendment Was Adopted?

A: “Reasonable Protection” of the right to lease means that a person who owns a unit when the amendment is recorded is **conditionally** exempt from the lower percentage imposed by that amendment.

Q: What “Condition” Is There on A Current Owner’s Exemption from a Lower Percentage?

A: The owner’s exemption from the lower percentage is conditioned upon continued ownership of the Unit. That is, the exemption is personal to the person who owned the unit when the amendment was recorded. The exemption does not pass to the next buyer of that unit.

Q: Does That Exemption Also Apply to the Higher Percentage (i.e. 50%)?

A: No. Recall that the higher percentage (i.e. 50%) is based upon the principle that a co-equal right to use property is conditioned upon a use that does not impair the use rights of the other co-owners. Because leasing a unit when fifty-percent of the total number of units are already being leased impairs the use rights of all co-owners, no owner has a right to lease their unit when fifty-percent of the total number of units are already being leased.