

**The scenario:**

A condominium association with a declarant-controlled board of directors has recently crossed the threshold of having 75% of its units sold to non-declarant owners. Ordinarily, the declarant would hold a meeting to transfer control of the association to the non-declarant owners, but it has concerns about doing so during the COVID-19 pandemic. Should it proceed with a transition meeting via remote means or should it wait to postpone the meeting and hold a traditional meeting once the government lifts or relaxes its COVID-19 restrictions?

**One attorney's opinion:**

In common interest communities that are subject to WUCIOA, Declarants should explore the feasibility of holding a remote meeting to transfer control of the association to the unit owners within the timeframe required by statute and should do so if reasonably possible.

Common interest communities formed after July 1, 2018 are subject to the Washington Uniform Common Interest Ownership Act, Chapter 64.90 RCW ("WUCIOA"). The statute requires a declarant to hold a transition meeting to turn control of the association over non-declarant unit owners.

RCW 64.90.415(4) provides two mutually exclusive events that trigger a declarant's obligation to hold a transition meeting. If the declaration provides for a period of declarant control, then the declarant must hold a transition meeting within 30 days after declarant control ends (the declaration and RCW 64.90.415(2) provide the criteria for ending the period of declarant control). If the declaration does not provide for a period of declarant control, then the declarant must hold a transition meeting within 60 days after the conveyance of 75% of units to non-declarant owners.

The statute does not allow any exceptions to the requirement of a transition meeting or its timing.

WUCIOA allows an association's meetings to be conducted by remote means, so long as such meetings are not prohibited by the association's governing documents and the following standards are met:

- (i) The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and
- (ii) The process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in [RCW 64.90.445(e)].

A remote transition meeting may not be possible in every community, for example if the association's governing documents explicitly prohibit such meetings. Another potential difficulty is that RCW 64.90.415(4) envisions that the owner-controlled board will be elected "at the transition meeting." One way to cast votes for an election at a remote meeting is a roll call vote – that is have the board or the manager call on each unit and have each unit owner identify herself/himself and verbally cast a vote. In very large communities, this may not be a reasonable method for collecting votes. Some communities may be able to organize votes using proxies or absentee ballots, as authorized by RCW 64.90.455. Associations should work with their managers and legal counsel to review governing documents and available resources and determine the best way carry out a vote at a remote meeting.

If a declarant fails to hold a transition meeting within the time prescribed by WUCIOA, it has violated the statute. If the association or any unit owners are damaged as a result of that violation, the declarant may be liable. Declarants should protect themselves and their communities by working to hold remote meetings to transfer control of the association to the unit owners.

The information contained in this statement is the opinion of only one attorney. You should consult your attorney or other association professional before taking action or failing to take action regarding a similar situation.