

The HOA Mini Report is a quarterly newsletter providing news of legal developments of interest to homeowners associations throughout Eastern Washington. If you have any comments or suggestions, would prefer to receive this report by email, or would prefer not to receive this newsletter in the future, please contact me at [nick@gnbergh.com](mailto:nick@gnbergh.com).

With signs of spring in the air, this issue of the HOA Mini Report covers a couple of timely topics and a couple of war stories.

## 1. Taxes.

If it's spring, it must also be tax season. And yes Virginia, if you have income, you need to file a return, even if you are a non-profit organization. The Internal Revenue Service has thoughtfully provided Form 1120 H, a return just for homeowners associations. The form and instructions can be downloaded from the IRS website:

<http://www.irs.gov/pub/irs-pdf/f1120h.pdf>

<http://www.irs.gov/pub/irs-pdf/i1120h.pdf>

## 2. April News.

The *Washington Post* recently reported that Ms. Beatha Lee was elected president of a Virginia homeowners association. At the election, Ms. B was described as "a relatively new resident, interested in neighborhood activities and the outdoors, and who had experience in Maine overseeing an estate of 26 acres." Only later did members discover that their new president was, in fact, a Wheaten terrier.

The new president belongs to the former president, who had served three terms and was not eligible for re-election. Because he couldn't find any member willing to run for the position, he decided to run his dog hoping to make a point about member apathy. The association bylaws required officers to be a resident of the neighborhood, and to have attained the age of majority (which Ms. B did, in dog years). The bylaws did not require that candidates be human.

Ms. B attends board meetings, usually monitoring proceeding from under the table. Even though Ms. B promised to "govern with an even paw," many members were initially upset. With time, most members have come to accept Ms. B as president, even though the remaining board members have to shoulder the load of governing. While some hope the next president will be human, others have suggested a cat should succeed to the position if no human candidate comes forward.

I like this story as a caution on the perils of poorly written governing documents, and as an inspired means of making a point about the importance of homeowner participation in HOA governance.

## 3. The Farm Report.

An Issaquah HOA recently rented 400 goats from Rent-a-Ruminant of Vashon Island and Healing Hooves of Edwall, to deal with high grass and invasive weeds on 12 acres of hillside. The association turned to goats because the areas are too steep for human crews to reach safely or cheaply. A Maryland HOA rented a herd from Eco-Goats of Davidsonville to clear a five acre tract of invasive weeds. The association decided to use goats because goats are quicker and cheaper than people and less dangerous than herbicides.

Homeowners associations across the nation are turning to goats as a cost efficient, quiet and ecologically beneficial way to trim vegetation and control weeds, often for fire safety and weed control in open areas. However, if members jump on this trend as a better way to maintain their lots, they could face resistance from association boards and neighbors who prefer traditional landscaping methods. Opponents will likely rely on common covenant restrictions on maintaining livestock on lots. Proponents are likely to answer that the goats are not maintained on the property, but only present for short periods necessary to perform their task. Associations faced with this dilemma may wish to consider which approach is the most beneficial to the development and then address the issue through policy guidelines interpreting covenant language, if unclear, or by covenant amendments, if the covenants clearly prohibit the preferred alternative.

## 4. Cautionary Tales.

**Minimizing Financial Risk.** A Georgia man serving as treasurer of his homeowners association was accused of taking nearly \$18,000 from his neighborhood association by writing checks for cash and to pay his credit card bills. A California woman working as office manager for a homeowners association pleaded guilty to unauthorized payroll deposits and purchases exceeding \$27,000. Two Florida men, serving as president and vice president of a condominium board pleaded guilty to stealing more than \$290,000 from a reserve account. These thefts may have been prevented had the affected associations implemented standard precautions against embezzlement. Some examples appropriate for homeowners associations:

- ✓ Require two signatures on all checks or on checks over a specified amount.
- ✓ The individual responsible for reviewing and approving invoices should not also prepare or sign the checks.
- ✓ Checks presented for signature should be supported by bills or other proof. Verify vendors regularly.
- ✓ Regularly review and reconcile bank statements. The person responsible for reconciling bank statements should not be the only person reviewing those statements. Every board member should periodically review the bank statements.

**Difficult Decisions.** In Minnesota, a group of homeowners pitched in to build a backyard hockey rink for the neighborhood kids. A neighbor complained and the homeowners association demanded its removal, taking the position that the rink was a "nuisance" prohibited by the covenants and that it is obligated to act on member complaints.

In Texas, a family purchased a baby kangaroo as a vocational training animal for their 16-year-old girl with Down syndrome. The homeowner association demanded removal, claiming the kangaroo was not a pet. In reversing the decision, the association admitted that when it demanded removal, it was unaware that the kangaroo was being used for therapy purposes, and that the family intended to move the animal to a wildlife park within a year.

A North Carolina homeowners association was unsuccessful in its battle to ban two Nigerian dwarf goats. The association's covenants prohibited animals, other than horses, dogs, cats and other pets. Neighbors complained, a lawsuit followed, and eventually a court ruled that the goats could remain because they were pets.

The common thread in these stories—boards making demands based on ambiguous language or lack of knowledge. Reasonable minds can differ on whether backyard hockey rinks should be considered nuisances in wintertime Minnesota, or whether kangaroos and dwarf goats can be pets. However, perspective is important; before making demands, boards should determine the facts, view the situation from the viewpoints of both the complaining neighbors and the affected homeowner and consider whether the conduct is clearly proscribed by the covenants. Boards are not required to resolve every complaint to the satisfaction of the person complaining, or prohibit anything that is not clearly proscribed

by the covenants. While boards must act impartially and fairly, board members can exercise their judgment in cases where more than one outcome is possible. Boards should also consider whether some compromise might resolve the problem. For example, the hockey rink problem might have been resolved by agreements to shield the lights and restrict hours of use. The pet problems might have been resolved by agreements to keep offensive smells and behavior away from neighbors.

## 5. A Final Word - I Promise.

In my last issue I reminded you to not forget the new Reserve Study law that took effect on January 1. Unless your association is exempt, you are required to perform a reserve study. I suggest that you create a record that your board took heed of the new law, even if exempt from its requirements. HOAs are exempt if there are 10 or fewer homes in the association; the cost of the reserve study would exceed 5 percent of the HOA's annual budget; or the HOA does not possess "significant assets," meaning the current replacement value of the major reserve components is less than 75 percent of the HOA's gross budget, excluding reserve account funds. If your association is exempt, you should discuss the reserve law requirements at a meeting and adopt a resolution reflecting that consideration and the exemption relied on. If your association is exempt because it does not have significant assets, the resolution should list the assets and the estimated replacement values.

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This newsletter is not a substitute for legal advice. Please consult with your legal counsel for specific advice and information.

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