

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, please contact me at nick@gnbergh.com.

This issue marks the first anniversary of my HOA Mini Report. I hope you have found my newsletter useful and interesting, and I thank you for your readership and support.

I have a favor to ask of you. Postage and handling for mailing my newsletter is expensive and I would like to minimize the cost of distribution. I would appreciate you providing me with your email address so I can send future issues to you in PDF format. I will not share your email address with others. If you would like me to email you back issues, please let me know. There is an index of Volume 1 articles at the end of this issue.

1. Little House on the Prairie—Homestead and HOA Liens.

Washington law creates an automatic homestead exemption for principal residences. This homestead exemption prevents enforcement of some types of judgments against the first \$125,000 of equity in a home. The homestead exemption is not available for some types of judgment. The most common of these is judgment of foreclosure of a deed of trust or mortgage.

The homestead exemption is also not available in a foreclosure of a homeowner association lien. But there is a catch—in order for an association to avoid the homestead exemption, the association must have provided the homeowner with notice that nonpayment of the association's assessment can result in foreclosure of the association lien, and that the homestead protection does not apply if the lien is foreclosed. The notice must be mailed, by first-class mail, to the owner's address in the HOA development, within thirty days after the date the association learns of a new owner. In all cases the notice must be given prior to beginning a foreclosure. An association "learns of a new owner" when it has actual knowledge of the identity of a homeowner but this does not require an association to take any steps to determine the identity of a homeowner. The homestead exemption is available as to assessments accrued before the date notice is given.

Other factors, such as the presence of a substantial first mortgage, often make foreclosure of assessment liens impractical. However, there is an easy way to avoid the homestead exemption in cases where foreclosure is practical. Most associations mail regular billings for assessments. Consider including a notice in all bills for assessments—"**Nonpayment of assessments may result in foreclosure of your property. No homestead exemption will be available in the foreclosure action.**" These bills will comply with the notice requirements of the statute and will ensure that the homestead exemption will not be available as to all outstanding assessments, if foreclosure becomes necessary. You may also want to consider sending bills to "occupant" instead of the names of the owners if a bill is returned as undeliverable. This will avoid missed notices, either because forwarding orders have expired or because notices are forwarded to former owners. Occupant mailings will also comply with the requirement that the notice be sent to the homeowner at the address within the HOA development. You may consider accommodating owner requests for a billing to an address outside of the development, but this should be an additional mailing, not a substitute for a mailing to the address in the development.

2. Just Say No to Email for Association Business.

HOA management takes time and effort, and the pay and benefits are lousy. Why not take advantage of the convenience of email to streamline association business? Email is a great tool for sharing information and general communication such as neighborhood news, and to gather suggestions and ideas. In some limited cases, formal association business may be

conducted by email, provided appropriate steps are taken first. In most cases, use of email for formal association business should be avoided. Most Associations are non-profit corporations, and statutes dealing with non-profit corporations (Chapter 24.03 RCW) apply to them. In addition, you need to consider statutes specifically governing homeowners associations (Chapter 64.38 RCW) with respect to requirements for formal communications and actions.

- **Notices.** Formal notices to Association members and directors may be sent by email, but only if the member or director consents (RCW 24.03.009). Emailed notices sent without consent are ineffective. Consent must be in writing or by email, and must specify the format used by the recipient, and the email address. Consent may be revoked at any time and consent is automatically deemed revoked if two consecutive emails fail to go through, and the failure is known to the sender. Notices may also be given by emailing a link to a notice posted on a website, provided instructions on how to access the notice on the website are also provided.

Not all notices may be emailed. Even though the non-profit corporation statutes permit emailed notices of annual or special meeting of non-profit corporations, a homeowners association statute (RCW 64.38.035) requires notices of annual or special HOA meetings to be hand-delivered or sent by US mail. Since the latter statute applies specifically to homeowners associations, the requirement of delivered or mailed notice controls over the general non-profit corporation statute. If your bylaws or covenants require notices by hand delivery, or regular or certified mail, you must do so, even though the non-profit corporation statute permits notice by email.

- **Board Meetings and Voting.** In Washington, the general non-profit corporation statutes require board meetings to be in person or by conference call, but allow board members to make decisions without a meeting, for example by email, if all members unanimously agree and document their decision in a written consent. However, a homeowners association statute (RCW 64.38.035) requires board meetings to be open to all members of the association, and accordingly the board of an association should not make decisions by email. While board members may exchange information by email in preparation for meetings, any decisions should be made only after discussion and a vote at an open board meeting.

- **Association Meetings and Voting.** The non-profit corporation statutes require non-profit corporations to hold meetings in person or by conference call, and implicitly prohibit meetings by email. On the other hand, the non-profit corporation statutes permit voting by email if specifically allowed under the association's articles of incorporation or the bylaws. If votes by email are solicited, the text of each proposal to be voted on (including candidates for office) must be stated in or accompany any meeting notice. Members voting by email are deemed present for quorum and vote-count purposes. The homeowners association statutes are silent as to whether general association meetings or votes may be conducted by email.

As a matter of policy, in person meetings encourage full and open discussion of issues before the board or association and should be preferred to email decision making, except for routine or non-controversial matters. If your bylaws or covenants do not explicitly authorize email voting as association members, voting should not occur by email.

- **Other Considerations.** As you have likely heard before, emails never go away and sometimes escape. Never say anything in an email you would be uncomfortable seeing on the evening news. Because email can be more easily misinterpreted than face-to-face discussions, compose carefully, and take your time before sending email, particularly those discussing controversial topics. The homeowners association statutes require all records of the association, which includes email correspondence relating to association matters, to be maintained and made available for examination by any owner.

Email is generally not confidential and may be subject to discovery in a lawsuit involving the association. Email correspondence between the board and its attorney may be shielded from disclosure in a lawsuit, but only if it involves legal advice or materials prepared in anticipation of litigation. Even this protection may be lost if the email is copied to or shown to a third party.

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

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