

A quarterly newsletter providing legal news and analysis of interest to homeowners associations in Eastern Washington. Please contact me at nick@gnbergh.com with any comments or suggestions.

Happy New Year! I hope you all had wonderful holidays this year. There are big changes this month at the Mini Report! As of New Year's Day, I have opened my own law office. Because of the million things I need to do to establish a new office, this issue will be more mini than usual, but the Mini Report will continue as before. Please make note of my new email address.

I have a favor to ask. Postage and handling for mailing this newsletter is expensive and time consuming. If you would provide me with your email address, I will send future issues to you in PDF format rather than by US mail. I will not share your email address with others. If you would like to receive back issues or would prefer not to receive this newsletter, please let me know.

No Parking. Association covenants often prohibit or limit street or outside parking, or ban certain types of vehicles such as service vehicles, motorhomes or junkers. Can an association have unpermitted vehicles towed?

If the streets within the development are dedicated public streets, (i.e., not common area), towing is not an option. Under state law, vehicles may be ordered towed from public streets only by a law enforcement officer or other public official. Unfortunately, local police are unlikely to involve themselves in enforcement of private covenants, unless the problem also violates local law.

If the streets within the development are private (i.e., common area owned by the association), state law allows more freedom. The owner of nonresidential private property (i.e. private streets and parking lots) may have vehicles towed on twenty-four hour notice if the property is not posted. If the property is posted no notice is required. Posting requires signs near each entrance and elsewhere on the property in conspicuous locations that clearly indicate (a) the basis for impounding vehicles as unauthorized, and (b) the name, telephone number, and address of the towing firm where the vehicle may be redeemed. The towing company will need an officer of the association to authorize the tow in writing.

If the property is residential property (i.e., your private driveway or lawn), only the owner or tenant of the property may have an unauthorized vehicle impounded but may do so without notice upon giving written authorization for the tow.

Enforcement by fines is another possible solution, but the association must first comply with the HOA statute requirements. The statute requires associations to have procedures in place for a hearing to contest a fine, and a schedule of reasonable fines for violations. These must be in the covenants, the bylaws or in rules adopted by the Board. The schedule of fines must be provided to the members of the association before enforcement. If the association fails to establish or follow enforcement procedures or fine schedules, it is inviting a challenge to the validity of its fines, and under the HOA statute, attorney fees can be awarded to the prevailing party for a violation of the statute.

Lawsuits to enforce the covenants are generally allowed and can be very effective. However, lawsuits may not be an attractive option because of the time and expense required, particularly if the covenants do not allow attorney fees to be awarded to the winner of the lawsuit.

No Quorum? If a quorum is not present at an association meeting, no business may be conducted. The HOA statute provides that, unless the covenants or bylaws provide

otherwise, a quorum is present if 34% of the votes of the association are present in person or by proxy at the beginning of the meeting. What to do if you don't have a quorum?

You can permanently adjourn the meeting without conducting any business. A new meeting called after adjournment but before the next regular meeting, would be a special meeting. The president, a majority of the board of directors, or by owners having ten percent of the votes in the association can call a special meeting. Notice of the special meeting must be hand delivered or mailed to the members between fourteen and sixty days in advance and the notice must state the time, place, and agenda for the meeting.

Alternatively, you may be able to adjourn the meeting temporarily to a different date, time, or place, by announcement at the meeting. In this case, further notice to the members isn't necessary. This procedure is specifically permitted under the for-profit corporation statutes, which could be applied by analogy, since neither the HOA nor the non-profit corporation statutes specifically address this alternative. This would allow the board to try informally to increase member attendance at the rescheduled meeting, without the delay and expense of formally noting a special meeting. Temporary adjournment could be useful in situations where attendance was only slightly short of a quorum, and the time to the rescheduled meeting is fairly short. Where a quorum fails by a large margin, noting a special meeting may be preferable to ensure that all interested parties have an opportunity to participate, and avoid challenge to action taken at the reconvened meeting, particularly in the absence of a controlling statute.

Names. What should you do if a member asks for a list of the names and addresses of all other members? Your first reaction may be to refuse, either because of privacy concerns or because the request is being made to communicate criticism of an officer or director or decision of the board. In this case, you should ignore your first reaction. The HOA statute specifically requires that "All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, . . . on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records."

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

Nick Bergh has practiced law in Washington for over 25 years, primarily handling real estate and business matters. Nick is available to provide a full range of legal services to association boards, including enforcement of covenants, collection of delinquent assessments, assistance with governing documents and governance, and guidance regarding applicable laws. Nick works collaboratively with clients to formulate and achieve goals appropriate to each association's situation, and strives to be always responsive and efficient in providing legal services.

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