

HOA MINI REPORT

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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. If you would prefer not to receive this newsletter, please let me know.



I hope you all had a relaxing 4th of July holiday and are anticipating your other plans for summer fun.

I have a favor to ask. Postage and handling for mailing this newsletter is expensive and time consuming. If you would provide 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. My thanks to all that have already switched over to email delivery.

Fair Housing. For many years, the federal Fair Housing laws have prohibited discrimination in housing transactions based on race, color, religion, sex, national origin, familial status, and disability. Washington State has its own fair housing laws, part of the Law Against Discrimination (Chapter 49.60 RCW), which are similar to the federal Fair Housing laws. While homeowners associations seldom engage directly in housing transactions, some parts of the state and federal fair housing laws do apply to homeowners associations, particularly those laws prohibiting discrimination based on disability. Under state law, "disability" means the presence of a sensory, mental, or physical impairment that is medically recognized; or exists as a record or history; or is perceived to exist whether or not it exists in fact. This state law definition of disability is broader than the federal law's.

Unlawful discrimination based on disability commonly occurs in two situations. The first of these is an association's failure to provide a reasonable accommodation to a disabled member in enforcement of the association's covenants, rules, policies, or provision of services, as may be necessary to allow a disabled person the same opportunity as a non-disabled person to use and enjoy his home. The most common example of this type of discrimination is refusal by an association to modify or provide an exception to a no-pets policy where a disabled resident has need for a service animal, such as a seeing-eye dog. Another common example is an association's refusal to allow operation of a group home for disabled persons because the covenants prohibit business use or rentals. RCW 64.38.060 provides specific protection for adult family homes (a residence where personal care, special care, room, and board is provided to two to six unrelated adults). Fair housing laws require accommodation of these uses, unless accommodation would create undue financial or administrative burdens.

The second common kind of disability discrimination occurs when an association fails to allow a reasonable modification, at the disabled person's expense, of her residence or a common area to afford a disabled person full enjoyment of her dwelling. For example, a person confined to a wheel chair may request permission to install a ramp. The fair housing laws require the association to allow the modification so she can access her home.

The fair housing laws are complex and the procedures are convoluted. Fair housing disputes are intensely fact-specific and violations can lead to substantial penalties and awards of attorney fees. An association faced with a possible violation of fair housing laws should proceed with extreme caution and the assistance of counsel.

New Law – Electronic Notices of Association Meetings. The October 2012 issue of the Mini Report noted that while the non-profit corporation statutes permit emailed notices of annual or special meeting under certain conditions, a homeowners association statute (RCW 64.38.035) requires notices of association meetings to be either hand-delivered or sent by mail. Recent amendments to RCW 64.38.035 will permit electronic transmission of notices, subject to consent requirements. The new law takes effect on July 28, 2013.

The new subsection (c) of RCW 64.38.035 provides that in addition to the already permitted methods, notice of an association meeting may be provided by:

Electronic transmission to an address, location, or system designated in writing by the owner. Notice to owners by an electronic transmission complies with this section only with respect to those owners who have delivered to the secretary or other officers specified in the bylaws a written record consenting to receive electronically transmitted notices. An owner who has consented to receipt of electronically transmitted notices may revoke the consent at any time by delivering a written record of the revocation to the secretary or other officer specified in the bylaws. Consent is deemed revoked if the secretary or other officer specified in the bylaws is unable to electronically transmit two consecutive notices given in accordance with the consent.

You may be wondering, what does this mean? Although the language is not exactly the same, RCW 64.38.035(c) closely parallels the provisions of RCW 24.03.009, the non-profit corporation statute regulating electronic transmission of meeting notices. Under that statute, electronic transmission of notices is effective only if the recipient has consented, in a "record," to receive electronic notices. Consent may be revoked by delivery of another "record." Several definitions from the non-profit corporation statutes may be relevant to interpreting the new law:

"Electronic transmission" means an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by a sender and recipient

"Record" means information inscribed on a tangible medium or contained in an electronic transmission.

"Writing" does not include an electronic transmission.

After applying this statutory scheme to the new RCW 64.38.035(c), it appears that electronic notices delivered by fax, email or posting on a website, are permitted if a "written record" of consent to receive electronic notices is given beforehand. The written consent must be in the form of an original paper document delivered or mailed to the board and specifying the type of electronic transmission authorized. An emailed consent or a .pdf of a consent letter would not be sufficient. All members that have not consented in writing to receive electronic notices must be notified by personal delivery or by mail.

This newsletter is not a substitute for legal advice. Please consult with your legal counsel for specific advice applicable to your particular situation.

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