# HOA MINI REPORT

OCTOBER 2013
VOLUME 3, ISSUE 1

*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.*

This issue marks the second anniversary of the HOA Mini Report. Thank you for your readership and support. I have provided an index of this year's articles is at the end of this issue, and all back issues of the newsletter are available at my website www.gnbergh.com.

This issue also brings the Mini Report's first guest column, the following article on HOA insurance by Kelly Egan of Spokane's Farmin Rothrock & Parrott insurance brokerage.

## Insurance for Homeowners Associations.

There are three types of insurance coverage that every homeowners association should have. Two of these, property insurance and liability insurance, are familiar to most homeowners.

First is property insurance on association-owned common structures such as entry features, community fences, signs, clubhouses buildings and the common area of a condominium that is not included within the definition of an owner's "unit." This coverage should be written with limits adequate to replace the structure if lost or damaged due to a covered peril (fire, theft, vandalism, wind, etc.). This coverage will protect the members from special assessments should an unforeseen loss to property occur.

Second is general liability coverage, which protects the association from damages for bodily injury and property damage suffered by third parties because of negligence by the association. Poorly designed and or inadequately maintained common areas, such as recreational facilities, walking paths, roads, gates, and buildings can lead to injuries or property damage and liability for the Association. This coverage should be reviewed regularly to keep it in line with current loss experience.

The third and perhaps most unfamiliar type of insurance is Directors & Officers liability (D&O). The basic purpose of D&O insurance is to protect directors and officers from claims made because of wrongful (or allegedly wrongful) acts or omissions made while acting in their capacity on behalf of the association. Without this coverage, it can be difficult to find unpaid volunteers to take on this personal liability. An important exception is that D&O insurance does not cover bad faith acts, so fraud, theft and self-dealing would typically not be covered.

A few of the scenarios in which directors and officers may have liability are:

- Failing to follow legal requirements.
- Carelessness in conducting business or legal matters.
- Discrimination and arbitrary enforcement of covenants.

Common D&O claims are for discrimination and arbitrary enforcement. Discrimination claims often have to do with race, disability, or family status. Arbitrary enforcement claims can arise where boards treat some members differently than others. In one case, a board disapproved a fence, even though, unbeknownst to the board, a similar fence had been approved in the past. The homeowner filed suit against the board, the HOA, and the property manager and won a judgment for defense cost of nearly $100,000, which could have been covered by D&O coverage.

An association might also want to carry employment practices liability insurance if it has employees or fidelity coverage if there is a significant risk of theft or embezzlement. ❖

**Fair Housing Follow-up.** In the last issue of the Mini Report, I warned of the perils of violating of the Fair Housing Act or its state counterpart. A recent case serves to amplify that warning: a condominium HOA in Florida and its management company have agreed to pay $150,000 to settle a lawsuit alleging violations of the Fair Housing Act, based on allegations of occupancy limits that discriminated against families with children. Under the agreement, the HOA will modify its policy pay $45,000 to the family that initiated the complaint, $85,000 into a victim fund to compensate other families, and $20,000 as a civil penalty.

**Everything Old is New Again.** A recent article in a North Bend newspaper reported on a local policy dispute over backyard clotheslines. Many HOAs ban outdoor clotheslines as unsightly, in spite of their energy efficiency. However, there are 19 so-called "right to dry" states, including Oregon and California, that have outlawed such bans on clotheslines. A recent attempt to add Washington to the right-to-dry list failed, allegedly due to resistance by the "powerful homeowners association lobby." Clothesline advocates suggest that HOAs modify their covenants or loosen enforcement to permit clotheslines.

A Chesterfield, Virginia paper reported on an agreement resolving a dispute between a long time front yard gardener and his HOA, allowing a somewhat reduced front yard garden to be maintained, and rescinding fines levied on account of the garden. While this dispute was centered on ambiguous covenant language, the HOA acknowledged that the settlement was reached out of a recognition that the Association's rules can and should be modified to "reflect changes in our culture, society, and the way we live today."

Can there be any doubt that household free-range chickens will be the next skirmish?

---



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, interpretation and amendment of governing documents, governance, and guidance regarding applicable laws. Nick works collaboratively with clients to formulate and achieve goals appropriate to each situation, and strives to be responsive and efficient in providing legal services. Nick can be reached at:

Law Office of G N Bergh
2006 South Post Street
Spokane WA 99203-2049

Phone: 509-624-4295
e-mail: nick@gnbergh.com
website: www.gnbergh.com

Kelly Egan of Spokane's Farmin Rothrock & Parrott insurance brokerage writes liability, property, and other insurance for HOAs throughout Eastern Washington. Kelly can be reached at:

Farmin Rothrock & Parrott
2110 N Washington Street
Spokane, WA 99205

Phone: 509-323-3232
e-mail: kelly@frpins.com website:
www.frpinsurance.com

## Index to Volume Two