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. Back issues of the HOA Mini Report are available at my website.

This issue marks the third anniversary of my HOA Mini Report, and I thank you once again for your continuing readership and support. There is an index of Volume 3 articles at the end of this issue. As always, I have a favor to ask. Postage and handling for this newsletter are expensive and time consuming. If you would provide me with your email address, I will send future issues to you in by email, rather than by US mail. I will not share your email address with others.

Self Enforcing Covenant.

A Central Florida HOA has created the first self-enforcing covenant. After a resident walking her dog was mauled by a bear, the HOA voted unanimously to require all homeowners to use bear-resistant trash cans with locks, and also banned beekeeping and feeding of wild animals. The HOA enacted the rule in an attempt to prevent another bear attack by limiting the bears' food supplies - like open trash cans. Violation of the rules could lead to fines of up to $1,000. . . .

Or worse. . . . Stephen Colbert would love this story.

Oh, Bother-Nuisances.

Covenants in Washington often prohibit activities that may become an "annoyance or nuisance to the neighborhood." But what does this mean? Chapter 7.48 RCW contains several definitions of nuisance, including things "injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property." Washington courts have twice considered complaints of nuisance in HOA, finding, on the facts and covenant language presented, that neither composting nor outdoor parking of a recreational vehicle was a prohibited nuisance.

A recent Florida case shows how difficult and frustrating it can be to eliminate a perceived nuisance. Condominium residents living upstairs from a lounge objected to the drag queen pillow fighting and gelatin wrestling events held there. The residents filed police complaints and tried, without success, to have the City close the business, and to have the landlord break its lease with the lounge. In response, the lounge's owner has sued the HOA, claiming the residents made false complaints and conspired to interfere with the lounge's business. Interestingly enough, each party to this dispute viewed the other as the nuisance.

Whether any particular situation involves a nuisance depends on the particular facts involved, and results are very difficult to predict except in the most extreme cases. It is the Mini Report's opinion that any nuisance claim involving an otherwise legal activity will be difficult to win unless the covenant language clearly prohibits it, and a good reason exists for the prohibition. HOAs should attempt to resolve nuisance issues informally and internally and use court actions only as a last resort.

HOAs and the FDCPA.

All HOAs have occasion to collect delinquent assessments. Some take collection actions on their own, some use agents or attorneys. The federal Fair Debt Collections Practices Act (FDCPA), and its state counterpart prohibit many egregious practices used to collect consumer debt,

including intimidation, threats of criminal prosecution, repeated calls in the middle of the night, calls to the debtor's workplace, and require communications with debtors to disclose that they are made in an effort to collect a debt and provide a way for the debtor to confirm and contest the debt. Violations of the FDCPA can lead to large fines.

Assessments are consumer debt covered by the laws, and attorneys and collection companies who collect debts on behalf of associations are required to comply with FDCPA. However, HOAs attempting to collect these debts without outside assistance are exempt. Just because HOAs collection efforts are exempt, does not mean that HOA's should ignore the policy underlying the law. The Mini Report suggests that each HOA directly collecting debt from its members acquaint itself with the law and generally conform its collection practices with the law. Overly aggressive collection efforts are unlikely to build good will with your neighbors.

Recent Case Update.

Last issue I reported on the *Sudden Valley Community Association v. Casey* decision. At that time, the decision was unpublished, meaning it could not be cited as precedent. The case has since been "published," and thus can be considered by courts in deciding similar cases. The Sudden Valley decision held that approval of a budget with an assessment increase did not automatically approve the assessment increase if the HOA governing documents require a separate vote on increases. Associations that have treated approval of a budget as also approving any assessment increases described in the budget, should consider whether to revamp their procedures to comply with the case.

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:

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Index to Volume Three