

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.



I, for one, am definitely enjoying this spring weather. Tax season, not so much. As always, I have a favor to ask. Postage for this newsletter is expensive and handling is 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.

April Fools. A homeowners' association in Chula Vista, California, decided to impose \$50 fines on member's children caught playing in outdoor common areas. The HOA rules ban wheeled toys (including roller skates, roller blades, bicycles, skateboards and scooters) in the common areas, including streets, sidewalks and driveways throughout the complex. Sounds like a fun place to raise a family.

And it's not just California. The Department of Housing and Urban Development recently settled a Fair Housing claim against an apartment complex in Denver for enforcing this rule: "All children must be supervised *by an adult at all times while playing outside. No sports activities, skateboarding, roller-blading, or general extracurricular activities are to take place in our community. If we see anyone violating any of the above activities or see any unsupervised children they will be sent home immediately.*" The settlement required amendment of the rule, construction of a \$10,000 playground, and fair housing training for employees. HUD commented on the settlement "A requirement of constant parental supervision of all minors, and even teenagers, is oppressive, unnecessary, and unfairly burdensome on families with children. The Fair Housing Act protects the rights of families with children to enjoy the same housing amenities that others do."

It's Texas too. A Texas HOA (the Happy Hide-A-Way Civic Club) was upset about the deteriorating condition of a home in the development. The association, relying on language in its declaration, decided that it could demolish the owners' home, and proceeded to do just that, without a hearing before the Board and without obtaining a court order. After the association demolished the home, it asserted a lien on the property seeking reimbursement for the \$3,200 cost of the demolition and fines of over \$80,000. The Association took the position that the board's authority in the covenants to remove garbage, trash, and rubbish applied to the home, and that it did not need to notify the owner that it intended to levy an \$80,000 fine. Astonishingly, the trial court agreed with the Association. The Texas Court of Appeals overturned the trial court and sent the case back for another hearing.

Sadly, these stories are not your typical April Fool's fare of pranks and practical jokes. These are true stories of foolish behavior.

Take Care with Committees. All of you know how much work being a board member can be. Why not set up committees to share the load? If you do, make sure you follow the requirements. The statutes governing condo and non-condo HOAs have no provisions about committees. However, the Washington

Nonprofit Corporation Act, Chapter 24.03 RCW sets several requirements for committees.

- First, the articles or bylaws must authorize the board to establish committees. Without such authorization, no committees may be established. What if the only authorization is in the covenants? I have not located any Washington case addressing this question. In the only case addressing this requirement in the context of an HOA, the bylaws did authorize an architectural committee.
- Second, the board must adopt a resolution designating the committee and appointing its members.
- Third, any committee created must contain at least two board members. Boards often establish committees without two directors, because the HOA statutes do not contain this requirement and governing documents often fail to address the composition of boards. Again, the only case addressing this requirement in the context of an HOA invalidated all actions by an architectural committee that did not have two board members, and also did not contain the number of members required under the bylaws.

Once a valid committee is formed, the Washington Nonprofit Corporation Act provides that the committee shall have and exercise the authority of the board of directors; however, the delegation of authority does not relieve the board of its legal responsibilities. There are limits to a committee's exercise of board authority. Under the statute, committees may not amend bylaws or articles, elect or remove members of the committee, or take actions not in the ordinary course of business.

If your board can't form committees that meet statutory requirements, it should consider using advisory committees, which are authorized only to make recommendations to the board. The requirements of the Washington Nonprofit Corporation Act would not apply to advisory committees because there is no delegation of board authority; the board, not the committee, ultimately makes the decisions. Boards should be especially careful to comply with the statutory requirements when forming a committee that can directly affect members, such as architectural committees.

This newsletter is not a substitute for legal advice. Legal counsel should be consulted for advice applicable to your particular situation.

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