# HOA MINI REPORT

OCTOBER 2015
VOLUME 5, 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. Back issues of the HOA Mini Report are available at my website.*

This issue marks the fourth anniversary of my HOA Mini Report, and I thank you once again for your continuing readership and support. There is an index of Volume 4 articles at the end of this issue. 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.

## Case Law – The Year in Review.

It has been a slow year on the legal front. No new legislation directly affecting Homeowners associations was enacted this year. There have been several cases involving homeowners associations, however none has far-reaching implications. This issue is a summary of the cases. Some of the cases are noted as "unpublished," meaning that they cannot be cited as precedent in other cases.

- *Club Envy of Spokane, LLC v. The Ridpath Tower Condominium Association.* This case arose out of the conversion of the former Ridpath Hotel in Spokane into condominiums. At issue was the validity of an amendment to the declaration that created additional units, altered voting rights and converted common area to private ownership. The challenger claimed the amendment was invalid because it was not approved by the number of votes required by the declaration and the condominium act. The association claimed the challenge was barred by a one-year statute of limitations. The court ruled the statute of limitations did not apply because the amendment was not properly enacted in the first place.

- *White v. Lakeland Homeowners Association.* This unpublished opinion involved a project in Auburn with both single family homes and condominiums, governed by a single master declaration. One of the members sought and obtained a ruling that a leasing restriction in the covenants did not apply to the condo units. The case is hardly surprising, since the both the trial court and the Court of Appeals ruled that the rental restriction, which specifically applied only to "Single-Family Homes" did not apply to condominiums in multi-dwelling-unit buildings. It is worth noting that the Association was required to pay over $24,000 for the member's fees, in addition to the fees of their own attorney.

- *Crystal Ridge Homeowners Ass'n v. City of Bothell.* The Washington Supreme Court affirmed decisions of the trial court and the Court of Appeals that the City had responsibility to repair and maintain a failed drainage interceptor pipe under the terms of an easement that granted the City a "right of ingress and egress for the purpose of maintaining and operating stormwater facilities." While the result is not surprising, the City's decision to take the case to the Supreme Court is.

- *Riverview Community Group v. Spencer & Livingston.* A developer planned a residential subdivision centered on a golf course, and marketed lots on a plat showing that amenity. When the developer later closed the golf course and began platting it into more lots, an informal association of some, but not all, of the affected owners sued, seeking a decision that would require the golf course to be left in place. The developer claimed the group had no standing to sue on behalf of its members, because it did not represent all affected owners. It also claimed that any promise to prevent use of the golf course for other purpose (the new lots) had to be based on an express written promise, and that the advertising materials showing the golf course were not enough. The trial court agreed with the developer and dismissed the action. The Court of Appeals and the Washington Supreme Court reversed, ruling that the community group had standing to bring the suit on behalf of its members, and that Washington law allowed advertising materials to be used to imply an

enforceable promise not to change the use of the golf course, so long as the implied promise was made by someone with authority to do so, and the promise was relied on in making a decision to purchase. The court remanded the case for further hearings.

- *Gaona v. Glen Acres Golf & Country Club.* Mr. Gaona was an employee of the landscaping firm that for 30 years had maintained the grounds of a 225 unit condominium development and the adjacent golf course. While working, he was injured by a falling tree. He sued the homeowners association, claiming it had failed to warn or otherwise protect him of the dangerous condition posed by the tree. The homeowners association responded that it had no actual knowledge of the dangerous tree, and that it had satisfied its legal obligation to invitees by hiring the company Mr. Gaona worked for to maintain the grounds and trees. The Association claimed that the landscaping company was negligent in failing to discover the danger, and that the association was not responsible for the landscaping company's negligence. The Court of Appeals agreed in this unpublished opinion.

- *Hartstene Pointe Maintenance Association v. Diehl.* This unpublished case rejected a challenge to Board-enacted rules establishing a hazard tree policy because (i) the governing documents did not contain a right of appeal, and (ii) the complaining member could not show the rules were arbitrary, or that he had been adversely affected. The decision also upheld the Board's decision to exclude the complaining member (who was also a Board Member) from an executive session after he had threatened litigation.

- *Morgan Court Owners Association v. Deutsche Bank National Trust Co.* This unpublished case upheld a condo association's foreclosure of its $8,800 superpriority lien for delinquent dues, and Deutsche Bank loss of its $240,000 deed of trust lien. The court noted that Deutsche Bank had not paid the association's lien, or done anything else to protect its interests. This result is available only to condominium associations, which have a limited statutory superpriority lien for delinquent dues.

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Nick Bergh has practiced law in Washington for 30 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. If you would like to retain Nick as counsel, he can be reached at:

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