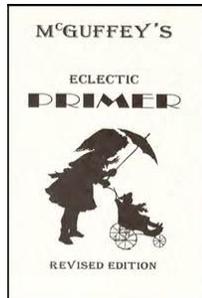


HOA MINI REPORT

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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 hope all of you had a happy holiday season. As always, I have a favor to ask. Postage for this newsletter is expensive and handling is time consuming. If you 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. This issue is a primer on HOA concepts and terms, which I hope is useful for Board newbies, as well as old hands.

Homeowners Association. While HOAs may be any form of entity, most HOAs are formed as non-profit corporations governed by Chapter 24.03 RCW, the Washington Nonprofit Corporation Act. In addition, HOAs may be governed by Chapter 64.32 RCW, the Horizontal Property Regimes Act (applies to condominiums formed on or before July 1, 1990), Chapter 64.34 RCW, the Condominium Act. (applies to condominiums formed after July 1, 1990, however, some provisions apply to all condominiums) or Chapter 64.38 RCW (applies to non-condominium HOAs). Condominiums may be mixed use, but non-condominium HOAs must be residential, and under the Governing Documents, obligated to pay costs of common area owned by the HOA. Unless otherwise stated, this primer covers only non-condominium HOAs.

Governing Documents. Governing Document include Articles of Incorporation, Declaration of Covenants, Bylaws, and Rules, and generally, the order of precedence is the order listed.

Articles of Incorporations. This document is filed with the Secretary of State to form a corporation. Pursuant to RCW 24.03.025, the Articles must contain: the name of the corporation, its duration (which is usually perpetual), the purpose for which the corporation is formed, the name and address of the initial registered agent, the number, names and addresses of the initial Board of Directors, and any other provisions desired. The number of Directors may be changed by amending the Bylaws (or the Declaration, if applicable) unless the Articles require the change in Board size to be done by amending the Articles. Many HOAs do not review the Articles when conducting business, which can lead to problems, since the provisions of the Articles control the other Governing Documents.

Declaration of Covenants. This document is recorded in the Auditor's office to provide notice of the restrictions to anyone purchasing a lot in the development. The Declaration typically, describes the property subject to the Declaration, lists restrictions on use of the property, identifies common area owned by the HOA for joint use by the members and the means of assessing lots for costs of common areas, describes the organization of the HOA, the methods of enforcement of the restrictions and assessments, the methods for amendment of the Declaration, and other provisions deemed relevant by the developer, usually referred to as the "Declarant." The Declarant typically retains a high level of control over the HOA until the development is nearly or completely sold out. Until the latter part of the 20th century, restrictions on property were not favored, and courts tended to interpret Declarations narrowly, often using byzantine rules of interpretation. More recently, courts have recognized the utility of use restrictions, and have interpreted them much more broadly. For the most part, content of non-condominium Declarations are not regulated. (Restrictions on adult family homes, solar panels, US flags, and political yard signs are statutorily prohibited or limited. Case law generally prohibits provisions adversely affecting protected classes.) Declarations for condominiums are required to contain more detail and additional provisions.

Bylaws. Bylaws are the operating manual for the HOA. Under RCW 64.38.030, Bylaws are required to contain provisions describing the number, qualifications, powers and duties,

terms of office, and manner of electing and removing the board of directors and officers and filling vacancies, what powers the Directors may delegate to others, which Board Members may sign documents binding the HOA, and the method of amending the Bylaws. Under RCW 24.03.070, the Board may amend the Bylaws without the consent of the members, unless the Articles or Bylaws provide otherwise.

Rules. RCW 64.38.020 empowers HOAs to enact rules. Rules are not required, but commonly are enacted, to regulate use of common area, flesh out vague provisions of the Declaration, or allow additional enforcement powers to the HOA Board. For example, some Declarations require that improvements built on lots must be in "harmony with the aesthetics of the surrounding structures and topography with regard to design and finished appearance," based on model documents developed by the FHA in the early '60s. Faced with this vague guideline, many HOAs develop rules to flesh out details of what is permitted. RCW 64.38.020 requires HOAs to enact rules establishing fine amounts and procedures for notice and hearing before fines are assessed. The power to enact rules is not unlimited. Rules may be invalid if they are inconsistent with the declaration, or impose new obligations or limitations beyond the scope of the Declaration.

Directors and Officers. Directors are elected by the membership to generally manage the affairs of the HOA. Directors in turn elect officers to carry out day-to-day management duties. In many cases, the officers' functions are performed by the Directors, although they need not be. The office of President and Secretary may not be held by the same person. Officers and Directors must act in the best interests of the HOA. Specific duties include holding an annual meeting, preparing budgets for approval or rejection by the members, and keeping records and making them available to members on request. Directors may be removed by a majority vote of the members, with or without cause. Officers may be removed as provided in the Bylaws. The Board of Directors may establish committees, but if the committee has power to act on behalf of the Board (i.e., is not strictly advisory); it must contain at least two Board members.

Meetings. HOA membership meetings require between 14 and 60 days notice to members. Notice generally must be mailed or hand delivered. Electronic meeting notice is allowed only to members that have specifically agreed to accept it. The notice must state the location of the meeting and describe the business to be conducted. If the meeting is to approve a budget, RCW 64.38.025(4) lists required content to be included in the budget summary included with the meeting notice. Minutes must be delivered to members within 60 days after the meeting. Board Meetings must be open to the membership, unless personnel or legal matters are to be discussed. The Board must state the reason for the closed session and must vote to close part of a meeting, and describe the purpose of the closed session in the minutes.

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

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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