

# 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](mailto: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.*



Due to this year's most unusual election season, the Olympics, and other distractions, this quarter's Mini Report is late. 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 by email, rather than by US mail. I will not share your email address with others.

**Election Signs** Elections are drawing near, and that means yard signs. You should take care to avoid the fate of the Virginia HOA that lost a ridiculous dispute over a political yard sign, was assessed \$400,000 in attorney fees, and was forced to file bankruptcy, as reported in the April 2013 issue of the Mini Report. Under Washington State law, HOAs may not prohibit political yard signs by an owner or resident during the time before any primary or general election. However, the HOA may impose reasonable rules and regulations regarding the placement and manner of display of political yard signs. Inconsistent provisions in covenants are void and unenforceable. No cases have yet been reported describing what rules and regulations are reasonable, so let caution, and perhaps legal counsel, be your guide.

**Sober Living Homes in your HOA?** Many HOA's covenants prohibit business activities. I have been asked several times whether these provisions can be used to shut down adult group homes operating in HOAs. The answer is no. State law prohibits HOAs from using covenants to directly or indirectly limit disabled persons from living in adult family homes or prevent adult family homes from operating in a development governed by an HOA. Non-discriminatory rules, such as those setting landscaping standards or sign locations, may be applied.

What is protected by this law? An "adult family home" is defined by statute as a "residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services." Additionally, to qualify for the law's protection, the adult family home must be licensed by the Department of Social and Health Services.

What about other living arrangements that do not fit within the definition quoted above, or are not licensed by DSHS? A 1994 Washington Supreme court decision held that a licensed commercial day care violated a "residential use only" provision in an HOA's covenants. The Washington Supreme Court last issued somewhat confusing guidance on attempts to limit short term rentals, as reported in the July 2014 Mini Report. Another type of living arrangement, sober living homes, is becoming common. These facilities operate as halfway houses for people going through drug or alcohol treatment. Often they are owned or leased by a treatment facility, and patients rent space in the house under house rules intended to minimize the risk of relapse. Sometimes an employee of the treatment center lives there, other times not. Typically, these facilities are not licensed. Are these facilities considered businesses that violate the HOA commercial use restrictions?

While some states have enacted statutes protecting sober living homes, Washington has not. However, attempts to use covenants prohibiting commercial use to keep sober living homes from operating in an HOA development would probably run afoul of the anti-discrimination laws such as the Federal Fair Housing Act and the Washington Law

Against Discrimination, as well as the Americans with Disabilities Act. The former laws prohibits discrimination based on disability (along with other protected classes), and the latter requires HOAs to make reasonable accommodation to allow disabled persons to live normally. Addiction is considered a disability falling within the protection of these statutes. Violations of these statutes can carry heavy penalties. On the other hand, if the residents of a sober living home are violating provisions of the covenants that generally apply to all other residents, such as covenants prohibiting nuisances, or regulation landscaping or signs, the HOA may take action, so long as care is taken that the rules are uniformly applied throughout the development, and are not enforced as a pretext to prevent the home from operating.

**Pokémon Gone?** Falling into the category of problems you do not have, yet, is this story out of Hollywood, Florida. A condominium association is considering filing a lawsuit against Niantic, the maker of the Pokémon Go game. The action is being considered in response to throngs of game players who gather outside the condominium building in the early morning hours.

The property is a “PokeStop” for the game, meaning that the virtual monsters that the players are trying to catch can be found near the building entry on the adjacent public boardwalk and beach. Making the problem worse is the fact that Pokémon monsters are electronically released by Niantic at midnight Pacific Time, resulting in hoards of players congregating outside the building at 3 a.m. Florida time. Players trespass on condominium property in search of the monsters, urinate in the bushes, litter, and make noise, all of which disturbs residents. The game also features “lure modules” and virtual gyms to encourage players to meet and wage battles with their Pokémon, resulting in condominium residents and their guests chasing monsters through the halls and gathering to wage battles in the common areas.

The association is considering joining a class-action lawsuit or filing one of its own seeking to force Niantic to remove the location as a PokeStop.

**Got Your Goat?** The Mini Report has a soft spot for goats, dating back to Zsa Zsa, a nanny goat pressed into duty as a wet nurse for an orphaned colt my parents owned. The Mini Report was sorry to hear that about 250 landscaping goats rented by an Issaquah HOA recently escaped from their pen. Someone lowered the fence and spooked the goats with fireworks. The goats' owner was able to round them up without damage, except for one goat that suffered from dietary indiscretion. The goat was treated with charcoal and survived. Police are investigating.

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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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