

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 fifth anniversary of my HOA Mini Report, and I thank you for your continuing readership and support. There is an index of Volume 5 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 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.

New Fair Housing Act Rules The Fair Housing Act prohibits discrimination based on race, color, religion, sex, national origin, disability, or familial status. HUD has adopted new rules, effective October 14, 2016, of particular interest to HOAs. Historically, standards developed in employment discrimination cases have been used, by analogy, in housing discrimination cases, even though the contexts are different. The new rules are intended to provide guidance directly relevant to housing cases.

As the Mini Report has noted, HOAs, and their officers, directors and agents are subject to the Fair Housing Act. The new rules define the term "Hostile Environment Harassment" as "unwelcome conduct due to race, color, national origin, religion, sex, disability or familial status, is sufficiently severe or pervasive as to create an environment that unreasonably interferes with the availability, sale, rental, use, or enjoyment of a dwelling, the provision or enjoyment of facilities or services in connection therewith, or the availability or terms of residential real estate-related transactions." Examples of unwelcome conduct include threatening imagery, property damage, threats, and actual physical harm. A single incident may be sufficient to establish liability.

Under the new rules HOA officer and directors may be liable not only for their own discriminatory actions, but also for failing to take action to stop a known discriminatory housing practice by a third party, such as an agent or member of the HOA. Under the new rules, HOAs should consider establishing a policy and complaint procedure for dealing with third party discrimination. Upon learning of discrimination by a third party, officers and directors should promptly take reasonable steps to stop the discriminatory acts, including warning offending members to stop, reporting harassment to the authorities, and in the case of agents and employees, steps such as training, warnings, and termination.

Solar Panels As interest in renewable energy sources continues to increase, and the price of solar panels continues to drop, HOAs may receive more requests for approval of solar panel installations, particularly if the cost of traditional energy increases. Some people find the installation unsightly, and some HOAs have rules prohibiting them. In a recently reported case in Louisiana, a homeowner spent \$60,000 to install solar panels that would have reduced his energy cost by 80%. The HOA filed suit to force removal of the panels, citing neighbor complaints, and failure to obtain architectural committee approval, even though there were no provisions in the covenants that addresses solar panels.

While the Louisiana case remains unresolved, Washington law provides some guidance on the issue. By statute, HOA governing documents may not prohibit installation of solar panels if the installation otherwise complies with applicable safety and zoning codes, and meets industry standards. Governing documents may regulate, to a limited degree described in detail in the statute, the placement, visibility, and esthetic coordination of a solar panel installation, and impose other reasonable regulations. Screening may be required for ground installations, if the screening does not defeat the utility of the installation. Conflicting provisions in governing documents are unenforceable.

Bringing a Knight to a Social Media Fight Ammi Miller, a Texas homeowner, is engaged in a knight fight with her neighborhood HOA. Ms. Miller owns a seven-foot tall replica of a medieval suit of armor, which she kept on her front porch for nearly a year. Her HOA sent a letter telling her to remove it because it violated restrictions prohibiting "sculptures, bird-baths, bird houses, fountains or other decorative embellishments unless specifically approved."

Ms. Miller wasn't having it. Taking the position that other homes in the area had porch decorations and that her home is her castle, she posted the letter on the neighborhood Facebook page, and created a "Save Sir Juan Rodriguez Dominguez Ramirez Perez Smith" page (I checked—its real). In order to avoid sanction by the HOA, she took up offers from neighbors to post the knight outside their homes. One neighbor volunteered to take the knight and dressed it in sunglasses, a Hawaiian lei around his neck and a drink in his hand, commenting, "We'll just make him the eyesore they thought him to be!" Other homeowners are lining up to take the knight next. They hope to keep moving him every few days so the HOA can't go after any single homeowner. Ms. Miller finds the situation to be "totally hilarious" and a neighbor harboring Sir Juan admitted that "I know we're being defiant. Defiant adults." The HOA declined comment, beyond citing the restriction described above and noting that the statue "is an unapproved decorative embellishment and, as such, is in direct violation of board policy."

The Mini Report can only shake its head at this story. While the HOA appears to have the stronger hand, perhaps the best solution is for the HOA to swallow hard and approve the decoration, as a better alternative to turning this knight fight into a court battle.

Correction In the July 2016 issue of this newsletter, I incorrectly identified the owner of the game Pokémon Go. The game is owned by Niantic. I apologize for the error.

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 since 1986, 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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Index to Volume Five

Volume 5, Issue 1 October 2015	Case Law – The Year in Review
Volume 5, Issue 2 January 2016	HOA Primer
Volume 5, Issue 3 April 2016	New Cases Halme v. Walsh Bilanko v. Barclay Court Owners Association Tyrannical HOA Orders Man to Remove Zombie From Yard
Volume 5, Issue 4 July 2016	Election Signs Sober Living Homes in your HOA? Pokémon Gone? Got your Goat?