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.

The Mini Report wishes all of you good fortune in the coming year. 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 Case - Homestead Revisited A recent published Court of Appeals case considered the interplay between the Condominium Act, the Homestead Act, and the Redemption Act in the context of foreclosure of a residential condo unit for unpaid assessments. The Homestead Act protects up to $125,000 of equity in a home from execution or forced sale, with certain exceptions. The Condominium Act contains one such exception, allowing a condominium unit to be foreclosed for unpaid assessments, free of the homestead exemption. The Redemption Act allows homeowners to stay in their home after a judicial foreclosure, during the redemption period, without paying rent. The Association claimed that the exception from homestead protection in the Condominium Act also eliminated the right to remain in a home following foreclosure. The Court of Appeals disagreed, holding that the Condominium Act eliminated only the $125,000 homestead exemption, but not the rights under the Redemption Act to continue to live rent-free in a home following judicial foreclosure.

Even though this result would also apply after a judicial foreclosure of non-condo HOA assessments, there is an important difference in homestead protection under non-condo HOAs. In the October 2012 issue of the Mini Report, I noted that non-condo HOAs can except themselves from the homestead exemption only by notice given to homeowners. The homestead exemption of $125,000 will apply in foreclosure of any assessments levied before the notice is given. To avoid this result, I suggested including a notice in all bills for assessments—"**Nonpayment of assessments may result in foreclosure of your property. No homestead exemption will be available in the foreclosure action**." Including this notice should put non-condo HOAs on the same footing as condo HOAs in judicial foreclosures.

New Case – Quorumless Elections A recent unpublished Court of Appeals case considered a challenge to a HOA's attempts to collect assessments. The homeowners claimed that the HOA's board was not properly constituted and had no authority to levy and collect assessments. The board of the HOA, faced with repeated failure to achieve a quorum at meetings to elect new directors, appointed new directors whenever a director resigned. In rejecting the challenge, the court noted that the procedure used by the board was consistent with both HOA statutes and non-profit corporation statutes, as well as a reasonable interpretation of the bylaws of the association. The Community Associations Institute joined the case as *amicus* and suggested that the 10,000+ HOAs in the state must be given room to interpret and apply their own governing documents. The court apparently accepted this position, ruling that it would "afford great deference to an organization's interpretation of its Bylaws and will only invalidate an interpretation if it is arbitrary and unreasonable." This case is a refreshing tonic after other decisions over the past several years that narrowly constrained board actions. Unfortunate that it is an unpublished opinion that cannot be used as precedent in other cases.

A Tale to Two HOAs A couple of recent stories serve as stark examples of how not to handle HOA disputes that potentially involve discrimination claims. Both involve HOA governance actions that led to legal actions that could probably have been avoided.

The first involves an Oregon couple whose adult daughter is confined to a wheelchair and has several disabilities, including Down syndrome, autism, scoliosis and severe bowel incontinence. To help deal with these disabilities, the family purchased a motorhome so the daughter could always have a restroom and shower nearby at all times. The parents asked for a waiver of a HOA rule prohibiting motorhome parking in the driveway. The HOA refused, and proposed two alternatives: park the motor home off-site or install a chemical toilet in a van. The parents responded that these were unworkable, the former was infeasible because the father took the family car to work, making it impossible to travel to the offsite location, the latter did not provide shower facilities should she soil herself while away from home. The HOA also took the position they were not legally required to grant the requested accommodation because it related to transportation and not the ability to use or enjoy the home itself. The inevitable far housing complaint noted that the family experienced extreme stress because of hostility from neighbors because of the issue, and that the HOA held association meetings in homes that were not wheelchair accessible. Not surprisingly, the judge ruled in favor of the family, although the issue of damages has not yet been decided.

The second case involves an elaborate Clark Griswaldesque Christmas display, including carolers and a live camel, in Hayden, Idaho. A prior display by the owner in a different home had drawn hundreds of viewers. The HOA initially threatened to sue, citing concerns of excessive traffic, glare, and noise. Although the HOA eventually backed down and allowed the display, they mentioned in their letter that non-Christians living in the neighborhood might be offended by the display. The owner stated "I don't back down for no one, who thinks that they're going to intimidate me and tell me that I don't have a constitutional right to do as I please on my property as long as it doesn't violate the law," The owner has now sued the Association for $250,000 for religious discrimination and is seeking to have his home removed from the control of the HOA.

In each of these cases, the HOA made a serious error that virtually guaranteed their involvement in a lawsuit. In the first case, the HOA ignored a clearly meritorious claim for accommodation, and persisted with overly technical arguments, even after the family sought assistance from disability advocates who told the HOA they were on shaky ground. Whether the HOA failed to seek competent counsel, or just persisted because they were hardheaded, is unknown. Had they done the first, or avoided the latter, they likely could have avoided the inevitable liability for their conduct.

In the second case, which appears to be more defensible than the first based on the facts presented in the news, the HOA made the error of unnecessarily injecting religion into a case that would have been better confined to the legitimate issues of traffic, glare, and noise. While the HOA may ultimately prevail, this unforced error, directed at an obviously combative homeowner, guaranteed that at minimum, the HOA will be involved in expensive and distracting litigation for the foreseeable future.

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, contact him at:

Law Office of G N Bergh
2006 South Post Street
Spokane WA 99203-2049
Phone: 509-624-4295
e-mail: nick@gnbergh.com
website: www.gnbergh.com