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.

It's been a beautiful summer so far, hasn't it? 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.

Liability for Online Harassment? A recent Federal Appeals Court decision considered several Fair Housing Act claims brought by two condominium owners claiming rights to keep emotional support dogs even though the condominium rules prohibited pets. The first claim was against the Board and several of its members for failing to grant a reasonable accommodation to the owners by failing to timely act on their request for waiver of the no-pet rule. The Board took over a year to act on the owner's request after the owners submitted paperwork from their doctors to establish their need for the support animals. Given the delay, the court's ruling that the Board could be liable is hardly surprising.

The more interesting claim addressed by the court was potential Fair Housing liability of non-Board members for online harassment. Two residents of the condominium development were upset by what they perceived as violations of the no-pet rule and posted derogatory and insulting postings over a five-month period on a blog maintained by one of the residents.

The Court overturned decision by the trial court denying the plaintiffs relief on their claim. The appeals court ruled that the derogatory blog postings could give rise to liability under the Fair Housing Act which makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by [the Fair Housing Act]." The court specifically held that a pattern of harassment was not necessary - a single incident could be enough to create a hostile environment and liability under the Act. Because the appeals court sent the case back for trial, there has not yet been a final finding of liability for the blog postings. However, the case is interesting because it is the first the Mini Report has run across discussing potential Fair Housing liability for conduct by private citizens not acting in an official capacity for an Association. Under the regulations discussed in last October's edition of the Mini Report, a Board could have liability if it fails to take action within its power to stop harassment by Association members of persons protected under the Fair Housing laws.

Sudden Valley Fallout In July and October 2014, the Mini Report discussed the Washington Supreme Court's *Casey v. Sudden Valley Community Association* decision. You may recall that the decision invalidated an assessment increase adopted by the Board, because the Board could not achieve the required 60% membership approval of the increase, even though the membership had majority approval of a budget contemplating the proposed assessment increases. Because of the dual approval requirement in the Association's Covenants, in the 46-year history of the development, only one assessment increase had ever been approved.

Not surprisingly, the lack of assessment increases led to a long decline in the public amenities of the large development, including 40 miles of deteriorating road, a former ice arena turned storage facility with a bad roof and a rotting framing, a marina with a failing bulkhead and lack of required firefighting equipment, leaky swimming pools, and cracked tennis and basketball courts. Part of the assessment problem was caused by earlier efforts undertaken to preserve the rustic nature of the development by merging building lots to lower density. This effort left the Board with 1400 fewer lots to pay for amenities sized for the original 4600 lot development.

The Board proposed borrowing $12 million to repair and rebuild common area facilities, and increasing the $72 monthly assessment by $36 per lot to pay off an 18-year loan. The Board believed doing all of the repairs at once made sense, because interest rates are low -- if the projects were done separately, the cost could be four times as expensive. Critics of the plan said they are not against fixing things up, but did not like the big loan and the assessment increase. Instead, they suggested the Board should have allowed separate votes the various projects so members could choose which improvements they want to pay for.

According to the president of the association "debate over the proposal was marked . . . by a great deal of acrimony, which at times degenerated into abuse, intimidation, and character assassination." This was nothing new—in prior years, the Association had churned through five general managers in five years, and in one year, members choose 12 directors for the nine-member Board, as directors resigned. Some longtime residents describe the current battle as the worst ever, and blame social media, describing internet groups as "the new lynch mobs." Some members proposed selling recreational amenities, including the golf course and marina, or dissolving the association and reorganizing as a road maintenance association.

The vote on the proposal was held earlier this month. The assessment increase garnered only 49% support, far short of the required 60% threshold. There is no news yet as to what, if anything, will be proposed next by the Board, and only time will tell if Sudden Valley's amenities can be saved.

Nick Bergh has practiced law in Washington for over thirty 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:

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