

*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.*



This issue marks the sixth anniversary of my HOA Mini Report, and I thank you for your continuing readership and support. There is an index of the past year's 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.

## Updating Governing Documents

When should you consider revising your governing documents? Common concerns include:

- Governing document that have been repeatedly amended, making it difficult to find applicable provisions.
- Formal defects, such as lack of legal descriptions or acknowledgements in declarations.
- Outdated provisions, for example provisions describing Declarant rights long after the Declarant is out of the picture.
- Outdated use restrictions, for example requirements for shake roofs in a fire prone area. Some formerly common use restrictions are prohibited, for example restrictions on flags, as applied to the US flag, and prohibitions on solar panels.
- Unworkable provisions, for example quorum requirements set so high that a quorum is never present, or approval requirements that are so high that approval can never be attained.
- Unclear provisions that defy understanding, or require frequent advice from counsel.
- Conflicting provisions in the same or different governing document, for example articles that require X directors and bylaws that require Y directors.
- Governing documents that are out of date, for example your documents may not include language permitting fines as a method of enforcement, reflect changes in budgeting process, or contain provisions addressing proxy voting or use of email or mail-in balloting to the extent allowed by law.
- Elimination of unpopular provisions, or addition of provisions that members like.

In the case of the first three concerns, a simple restatement of the document may be sufficient to achieve a readable document, cure defects, or eliminate provisions that are no longer applicable; there may be no need for substantive revisions. In the remaining cases, substantive revisions may be necessary, which may range in scope from simple revision of a single provision, to a complete rewrite of the governing document package. Substantive revisions should not be undertaken without consulting an attorney; a substantial body of Washington caselaw says you cannot make revisions that unfairly burden some owners in favor of others, or take away rights originally guaranteed in the unamended documents. In addition, there are statutory requirements and limitations that must be complied with.

What you should do if you think your documents need revisions, before you begin the actual revision process.

- Identify areas where you would like to see changes. These may include improved readability, creating state of the art governance procedures by taking full advantage of permitted practices, updating for changes in law, or addition of new rights and responsibilities of members, officers, and directors. You may want to involve the entire community or committees early in the process, to improve buy in and decrease resistance when the time comes for the final vote.

- Consult with your attorney to determine the scope of the project, to determine whether your desired revisions meet legal requirements, could create problems or be unenforceable or invalid. As always, the larger the scope of the project, the more time consuming and expensive it will be. Your attorney should be able to provide a rough estimate of cost, assuming agreement on the scope of work.

During and after the revision process, develop a plan for achieving approval of the revisions by the members. If you have involved the members early on, you can avoid including provisions that are certain to be controversial and likely to cause the entire project to crater. Take steps to ensure the members understand what the changes, by taking the time to explain what is being proposed in an understandable fashion, both in written summaries and informational meetings. Determine the best way to encourage participation in informational meetings and in getting the vote out, within the constraints of your documents. Your attorney can provide some help, such a preparation of ballots, but this stage of the process is most effective if conducted by members, officers, and directors.

### **Man Parks Tank in Upscale Neighborhood, HOA Declares War**

And you thought you had problem members. A Houston attorney purchased a restored, fully functional (except for the guns) WWII Sherman tank from a French museum and parked it on the street outside his house in a neighborhood filled with million dollar homes. The HOA was not as enthused as the attorney about the 33 ton, \$600,000 tank. It sent a letter saying the tank impeded traffic, was a safety issue, and had neighbors concerned. The attorney, as you may have expected, was unimpressed, pointing out that "there is no action they can take. They can ticket it or they can try to tow it, but the truth is unless I decide to move it, it's not going anywhere." Ultimately, the attorney moved the tank to his ranch, after the neighbors had a chance to admire it and their kids a chance to climb on it.

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This newsletter is not a substitute for legal advice. Consult your legal counsel 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, contact him at:

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