

HOA MINI REPORT

JANUARY 2018
VOLUME 7, ISSUE 2

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.



I hope you had a wonderful holiday season, and are off to a good new 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.

Officers and Directors I often get inquiries involving the election and respective roles of HOA officers and directors. Directors (sometimes called "trustees") are responsible for general oversight and policy making of the Association, while officers are responsible for the day-to-day management of the Association, in accordance with the direction of the directors.

Directors are usually elected by Association members, typically at the annual meeting. Officers (President, Vice President, Secretary, and Treasurer), on the other hand, are not elected by the Members, and it would be improper to hold elections to fill officer positions. Some governing documents specify nominating and voting procedures, many do not. In the absence of stated voting procedures, the manner of election may be governed by a catch-all voting requirement such as "all decisions of the Association shall be made by the vote of a majority of members present at a meeting where a quorum is present." This language would preclude giving board positions to the candidates with the largest number of votes, and instead would require each open position to be elected by majority vote of members present at a meeting.

Shortly after directors are elected, the new board is typically required by the Declaration or Bylaws to meet to elect officers. In many Associations, the officers are elected from among the board members, thus a board member may also act as an officer of the Association. Washington law permits a person to hold more than one officer position, but the offices of president and secretary cannot be combined.

Prior to holding elections, the board members should consult the Articles of Incorporation, Declaration, and Bylaws to determine who is eligible to act as an officer or director. Often, directors must be members of the association. Other qualifications may include not being term-limited, being in good standing, or having been a member of the association for several years.

Directors and officers may be removed only by the same group that elected them. Directors may be removed by a vote of the members, and officers may be removed by a vote of the directors. Washington law provides for removal of non-condominium HOA directors by a vote of a majority of the members; condominium directors require a 2/3 vote. No cause for removal is required.

Reserve Study Booklet I have written several times about Washington's reserve study law, which requires most HOAs to conduct periodic reserve studies. The statute is somewhat technical and can be hard to understand. Reserve Data Analyst, a Bellevue based reserve study provider, has a handy guide to the ins and outs of reserve studies that I encourage every Board member to read. The 40 page booklet can be found at:

<https://www.rdanorthwest.com/mt-content/uploads/2016/07/wa-state-reserve-study-guide-for-hoa-boards-and-property-managers.pdf>

The Reserve Data Analyst site, www.rdanorthwest.com, contains additional useful information about reserve studies and is worth visiting even if you do not hire them. I have not worked with Reserve Data Analyst, and am not recommending them, beyond the useful information at their website.

Fake Covenant Scam I thought I had heard everything, but this is a new one for me. A woman recorded covenants affecting an existing Kansas City neighborhood of thirty homes, without authorization from the owners, and even though she did not live or own property there. She sent out bills for assessments, and ultimately filed liens against all of the homes when the bills went unpaid. The owners were forced to hire an attorney to have the liens removed, and a state legislator has proposed a law that would make filing fake covenants a felony. The perpetrator's husband, who participated in early stages of the scam, is reportedly in federal prison following his conviction of a \$3 million mortgage fraud.

RICO Claim for Unauthorized Assessments From the "glad it's not me" department, two property owners in Illinois have filed claims under the federal Racketeer Influenced and Corrupt Organizations Act against a homeowners association. The complaint alleges that the covenants expired in 1975 but the association continued to enforce the covenants and collect assessments, under "threat of extortion . . . by threatening to have their water and sewer services disconnected." The case is still pending.

Street Fighting Presidio Terrace is the main street in one of the most expensive neighborhoods in San Francisco. The HOA, established in 1905, governs a gated community guarded by private security. The average value of homes is nearly \$5 million. The private street was owned by residents of the neighborhood, which have included Senator Dianne Feinstein and Representative Nancy Pelosi. Until, that is, the treasurer of the HOA retired and later passed away, resulting in the \$14 annual tax bills for the street being misdirected and unpaid for 17 years. After the city started to foreclose, local real estate investors snapped up the street for \$90,000, sight unseen. The neighborhood learned of the sale when a company working for the investors sent a letter asking if the HOA wanted to buy the street back.

The HOA hired attorneys, sued the city and the investors, and requested a hearing before the Board of Supervisors to overturn the sale. The Board of Supervisors overturned the sale, saying that the city should have made more of an effort to notify the HOA of the unpaid taxes before foreclosing. The investors have countersued seeking to have the Board of Supervisor's decision overturned.

The fight is acrimonious. The interim mayor called the investors "bottom-feeding pirates" in a public hearing. The investors responded that they bought the street legally and lost ownership only because the neighborhood residents are wealthy and politically connected, and asserting "The law doesn't apply to them." As evidence, the investor points to two other streets sold at foreclosure the same year in less affluent neighborhoods, where no action was taken to overturn the sales.

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 32 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