

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.



A wiser person than I once noted that if you are unable to find joy in snow, you will wind up with a lot less joy, but exactly the same amount of snow. 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 Relief from Zombie Foreclosures? As I reported in the October 2011 Mini Report, in the fallout of the last recession, zombie foreclosures became a widespread problem. Many houses were underwater; worth less than the amount of their mortgage. Borrowers quit paying, lenders began foreclosure, and often the houses were abandoned. Lenders sometimes delayed completing foreclosures to avoid HOA assessments and repair costs, and to keep foreclosed property off their books. Too often, the abandoned homes became nuisances, attracting vagrants and driving down neighborhood house values due to lack of maintenance. Because the properties were abandoned, HOAs had no ability to force repairs, and could not collect assessments until the foreclosure was completed. A 2016 Washington Supreme Court case made the problem worse by deciding that lenders could not enter properties for repairs until foreclosure was completed.

A new law enacted last year may address the problem by allowing cities and counties to require (or make) repairs to residential properties that have been determined by the jurisdiction to be (i) abandoned, (ii) in foreclosure and (iii) a nuisance. The law allows cities and counties to notify lenders of abandoned residential property. Under the new law, property is "abandoned" when there are no signs of occupancy, and there are at least 3 of 13 specified indications of abandonment. Property is in foreclosure when foreclosure proceedings have been started, but not completed. Whether the property is a nuisance is determined under existing statutes.

After determining a property is abandoned, in foreclosure and a nuisance, a city or county may so notify a mortgage servicer. The notice must be supported by an affidavit supporting the findings of abandonment, foreclosure and nuisance. Once a mortgage servicer receives the required notice and affidavit, it is authorized to secure the property and abate the nuisance. If the mortgage servicer does not do so within the time prescribed by local ordinance, the city or county may abate the nuisance. If a city or county abates, it will have a first-priority assessment for all of its costs, instead of the \$2,000 allowed under prior law.

Although municipalities always have had the power to abate nuisances, it was sometimes difficult to get them to act. It is hoped that the new law will result in savings to municipalities due to mortgage servicers abating nuisances, and failing that, the increased cost recovery allowed will cause municipalities to be more willing to become involved. If these hopes prove well founded, HOAs may have a new avenue to prevent zombie foreclosures from affecting their neighborhoods and finances. Time will tell.

Christmas Display Case Update. In last January's issue of the Mini Report, I commented on a case involving an HOA's objection to elaborate Christmas decorations (including 200,000 icicle lights, a live camel, and actors dressed as Roman centurions, the Grinch, and other Christmas characters) at a home in Hayden Idaho. I opined that the HOA had made a mistake when it injected questions of religion into the dispute instead of limiting its objections to issues of traffic, glare, and noise caused by the display. The matter has now been resolved, with the HOA ordered to pay the homeowner \$75,000 for violation of the Fair

Housing Act. As predicted, the violation was based in the inclusion in the HOA's notice of violation to the homeowner of a statement of concern that the elaborate Christmas display could offend non-Christians.

HOA Survey. A survey of 600+ HOA members taken last fall has interesting findings about the opinions and attitudes of members about their HOAs. Among the findings:

- Baby Boomers were the most likely to say they loved their HOA, while Gen Xers were the most likely to hate their HOA. Serving on the Board dramatically improved the perceived value of their HOA.
- Nearly 60% of members felt their assessments were worth the cost as opposed to 33% that felt they were not worth it. Among members that had served as Board members, 75% felt their assessments were worth it, while only 16% felt they were not.
- Millennials were the most likely to complain about loud music. Gen Xers were most concerned with the appearance of landscaping on their neighbors' properties. Baby Boomers, complained most about pet waste. Men were the most likely to complain about loud noise and smoking, while women were more likely to complain about their neighbors' pets and the appearance of lawns and homes.
- Baby Boomers were most likely to attend meetings, with nearly half always or often attending, while Millennials and Gen Xers were far less likely to attend, with over 60% rarely or never attending. Prior service on the Board dramatically increased the likelihood of attendance. Homeowners were more than twice as likely never to attend an HOA meeting if they hated their association. On the other hand, roughly 73 percent of residents who said they loved their HOA sometimes or always attended meetings.
- Homeowners that don't attend meeting blamed lack of time (63%) or lack of interest (48%), and many felt these meetings were unproductive for various reasons.
- In spite of the common perception that HOAs nitpick and are fine-happy, on average, homeowners said they only get notified for half of the rules they broke, with the fines imposed by HOAs averaging \$171 per year.
- Most hated HOA rules include landscaping policies (27%), parking regulations (15%) and pet restrictions (13%). Paradoxically, homeowners most wanted better rules for parking (35%) noise (29%) and cleaning up after pets (15%).

The survey can be found at <https://www.insurancequotes.com/home/honest-about-hoas>. It has some suggestions for improving member attitudes about your HOA and is worth a look.

This newsletter is not a substitute for legal advice. Consult your legal counsel for advice applicable to your particular situation.

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