

Second Report for the Senate
Consumer Protection and Housing Committee

from the Chair of the
Homeowners' Association Act Committee
Created by SCR 8423

September 28, 2007

SECOND REPORT FROM THE CHAIR OF THE HOMEOWNERS' ASSOCIATION ACT COMMITTEE

September 2007

A. Background

Homeowners associations are a rapidly growing form of housing in Washington State. These associations are typically formed as a result of restrictive covenants that developers record against property in residential subdivisions. The association's members are the owners of lots within the boundaries of the property subject to the covenants. Once the developer has relinquished control, associations are managed by a board of directors elected by the association's members. The rights and obligations of the association, its members and its board of directors are defined by state law and by the covenants recorded for the subdivision. In addition, the association may have Articles of Incorporation if it is incorporated, bylaws, and rules and regulations. These documents collectively establish the manner in which the association will be governed, and how it will carry out its primary function which, generally speaking, is the management, maintenance, repair and replacement of common areas and structures (e.g., recreational facilities) and design review and architectural control.

Unlike condominiums and condominium associations, there are no mandatory statutory requirements for the contents of the restrictive covenants that are recorded against residential subdivisions. This permits a great deal of variation between associations. To provide greater uniformity for associations, especially on vital management issues, the Legislature adopted the Homeowners' Association Act (the "Act") in 1995.

Since that time, an increasing number of proposals to modify the Act have come before the Legislature in response to constituent concerns. During the 2005-06 Biennium alone, 12 bills were introduced to address issues such as removal of discriminatory language from restrictive covenants, displays of political yard signs and of the United States flag, restrictions concerning roofing materials, the process for amending restrictive covenants, disclosure of homeowner information, and alternative dispute resolution mechanisms.

To ensure a comprehensive approach to modifications of the Act and opportunities for public input, in 2006 the Legislature established a study committee known as the Homeowners' Association Act Committee (the "Committee"). (A copy of the Resolution establishing the Committee is attached as Exhibit 1.) The Legislature ensured that the Committee's composition would provide a balance of perspectives. Members were selected based on their experience with homeowners associations, both as homeowners and board members, and on familiarity with this area of the law.

B. Committee's Work

1. Tasks

The Committee was asked to review the Act, the Uniform Common Interest Ownership Act, and various issues concerning homeowners' associations and to evaluate whether any

changes should be made to the Act. The Legislature specifically requested review of issues such as:

- ▶ Required disclosures on the sale of real property within homeowners associations
- ▶ Alternative dispute resolution mechanisms
- ▶ Methods for amending restrictive covenants
- ▶ Budget ratification and assessment (i.e., “dues”) collection processes

2. Committee Members

The Committee originally consisted of 10 members, but two resigned in 2006 and the balance of the Committee’s work was performed by 8 individuals. They are (in the order listed in SCR 8423):

- ▶ Marion Morgenstern, attorney experienced in representing homeowners and homeowners associations, Chair
- ▶ Senator Karen Fraser, member, Washington State Senate
- ▶ Rep. Toby Nixon, member, Washington House of Representatives (2006)
- ▶ Rep. Larry Springer, member, Washington House of Representatives (2007)
- ▶ Terry Leahy, representative of the Community Associations Institute, Washington chapter
- ▶ Todd Hobert, representative of the Washington Homeowners’ Coalition
- ▶ Steve Rovig, representative of the residential development industry
- ▶ Sanford Levy, attorney experienced in representing homeowners’
- ▶ Nancy Rust, member of a homeowners’ association

3. Meetings

The Committee met for the first time on July 24, 2006. Meetings were held monthly and then twice per month, with the last meeting held on August 20, 2007. It is safe to say that Committee members spent thousands of volunteer hours on the Committee’s work during the past 14 months.

The Committee’s meetings were open to the public and were regularly attended by interested individuals and stakeholder groups. Once per month a portion of the Committee’s meeting was set aside to receive public comment. The Committee’s work, including its decisions, meeting minutes and draft recommendations were also communicated to the public at large via a Yahoo Group website. More than 200 members of the Yahoo Group have monitored the Committee’s work and provided input, suggestions and comments on the draft recommendations. The Yahoo Group members include homeowners, board members, realtors, attorneys representing developers, homeowners and associations, and other interested stakeholder groups.

4. Decision Making Process

The issues the Committee was asked to address necessarily involve balancing the needs and interests of the individual against the needs and interests of the group as a whole. These are not easy matters to decide as striking the “right” balance is often difficult to define

and to achieve. In its work, the Committee was guided by three overarching principles: (1) avoid recommending changes to the Act that could have unintended adverse consequences; (2) consider the competing needs of associations and their members and find an appropriate, equitable balance, and (3) adopt recommendations through unanimous agreement whenever possible. For the most part, the Committee's work and recommendations were unanimous. Unanimity was not easily achieved. It required a great deal of discussion, debate and compromise by Committee members. During the relatively few occasions that unanimity was not possible, the Committee acted through formal motions and majority vote.

Balancing the competing needs and interests involved in the issues under consideration required compromise by all Committee members. To honor those compromises, the Committee agreed at the beginning of its work (and reaffirmed at the end) that its recommendations would be presented to the Legislature as a "package" and would be accompanied with a request that the Legislature adopt or reject the recommendations as a whole.

We recognize that the Legislature bears the final responsibility for turning the Committee's recommendations into law should it chose to do so, and for the nature of any changes that are made to the Act. As the Legislature takes up that responsibility in the upcoming session, I would like to emphasize that the Committee's recommendations are the product of hard-won compromises and the thousands of hours devoted by the Legislature's uncompensated appointees. We urge the Legislature to consider the Committee's recommendations carefully, to honor the compromises that they reflect, and to not cherry-pick the less controversial recommendations from among those that might be more controversial.

C. Committee Recommendations

As a result of its work, the Committee agreed on a number of changes that it recommends the Legislature adopt. The Legislature specifically requested that the Committee's findings, conclusions, recommendations and implementing legislation be provided by September 1, 2007, but time ran out on those efforts. That work is in process and a report of the Committee's final recommendations along with proposed implementing legislation will be submitted as soon as possible.

The Committee's recommendations will include specific recommendations on the following:

- ▶ Required disclosures on the sale of real property within homeowners associations (similar to the resale certificate disclosures required for condominium units), and a "Frequently Asked Questions" pamphlet that it is hoped will be distributed to purchasers
- ▶ Procedures for resolving disputes between associations and their members internally – i.e., "rule enforcement procedures," which specify the process that must be used before fines can be imposed on homeowners to ensure that homeowners are provided with due process
- ▶ Pre-litigation mediation requirements for certain types of disputes between homeowners and their associations designed to avoid litigation by helping the parties mediate disputes to find solutions

- ▶ An obligation of good faith in the performance of the board's duties
- ▶ New requirements for the amendment of restrictive covenants after they are initially adopted and recorded
- ▶ A new mechanism to allow associations with covenants that require 75% or more vote to approve amendments to seek judicial relief if requested by at least 67% of the votes in the association, and to permit a judge to reduce the voting requirement to 67% or greater
- ▶ A one year statute of limitations period for challenging recorded covenant amendments
- ▶ A new right and process for homeowners to veto bylaw changes made by boards of directors in associations in which the board has sole power to make and change bylaws
- ▶ A new right and process for homeowners to veto rules and policies made by boards of directors
- ▶ Budgeting, assessments and collection methods

Respectfully submitted September 28, 2007.


Marion Morgenstern, Chair
Homeowners' Association Act Committee

SENATE CONCURRENT RESOLUTION 8423

Passed Legislature - 2006 Regular Session

State of Washington

59th Legislature

2006 Regular Session

By Senator Fairley

Read first time . Referred to .

1 NOW, THEREFORE, BE IT RESOLVED, By the Senate of the State of
2 Washington, the House of Representatives concurring, That:

3 (1) The homeowners' association act committee is created. The
4 purpose of the committee is to review the homeowners' association act,
5 chapter 64.38 RCW, the uniform common interest ownership act, and
6 current issues concerning homeowners' associations as defined in RCW
7 64.38.010 including, without limitation, the method and manner of
8 amending restrictive covenants, voting, alternative dispute resolution
9 mechanisms, communications between homeowners' association boards and
10 association members, the budget ratification process, potential
11 conflicts between the homeowners' association act and other laws that
12 may be applicable to the organizational form of the association, and
13 the need for reforms regarding the process, in which liens are placed
14 on property for unpaid association dues against a new seller for a
15 previous owner's delinquencies, as well as a review of the required
16 disclosures on the sale of real property within a homeowners'
17 association.

18 (2) The committee shall consist of the following ten members:

19 (a) One member of the Senate appointed by the President of the
20 Senate;

EXHIBIT 1

1 (b) One member of the House of Representatives appointed by the
2 Speaker of the House of Representatives;

3 (c) The following six members appointed by the governor:

4 (i) A representative of the Washington state chapter of the
5 community associations institute;

6 (ii) A representative of the Washington homeowners' coalition;

7 (iii) A representative of the residential development industry;

8 (iv) A lawyer experienced in representing the interests of
9 homeowners' associations in their dealings with homeowners;

10 (v) A lawyer experienced in representing the interests of
11 homeowners in their dealings with the boards of homeowners'
12 associations; and

13 (vi) A person, who shall serve as the chair of the committee, who
14 has expertise in homeowners' association law; and

15 (d) The following two members appointed by the governor upon
16 recommendation of the chair of the senate financial institutions,
17 housing and consumer protection committee, and the chair of the house
18 judiciary committee: Two constituents who are members of a homeowners'
19 association and who are not serving on a homeowners' association board.

20 (3) Legislative members of the committee shall be reimbursed for
21 travel expenses in accordance with RCW 44.04.120.

22 (4) The committee shall examine the issues referenced in subsection
23 (1) and whether any changes should be made to the homeowners'
24 association act. The committee shall deliver a report of its findings
25 and conclusions and any proposed implementing legislation to the
26 appropriate committees of the Senate and House of Representatives by
27 September 1, 2007.

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