

**HOMEOWNERS ASSOCIATION ACT COMMITTEE  
MEETING AGENDA**

**Meeting Date: February 20, 2007  
Time: 11:00 am – 1:00 pm  
Location: Kent Centennial Building**

11:00 CALL TO ORDER

Approval of minutes of February 5, 2007 meeting

11:05 OLD BUSINESS/PENDING ITEMS

**Mandatory Mediation/ADR Process:** Complete discussion of mandatory mediation procedure, including the “default” process, claims that will be exempted, and abuse prevention provisions

11:45 DISCUSSION –GOVERNANCE ISSUES

1. **Judicial Relief from “Illegal Covenants”:** Complete work on the details of a procedure that can be used by homeowners and associations to clean up illegal or unenforceable covenants [*refer to 1/8/7 meeting minutes (copy attached), Discussion item 4*]
  
2. **Judicial Relief from Onerous Covenant Amendment Requirements:** Complete work on details of language that would permit owners subject to covenants that impose a vote requirement of 75% or more to petition the courts under certain circumstances for a reduction of the vote required to pass an amendment [*refer to 1/8/7 meeting minutes, Discussion item 5*]
  
3. **Amendment of Articles, Bylaws and Rules and Regulations:** Time permitting, begin discussion of procedures for amending these types of governing documents

12:50 NEW BUSINESS

1:00 ADJOURNMENT

**Location and Schedule of Future Meetings**

<b>Date</b>	<b>Location</b>
March 5, 11:00 am (With Public Comment)	Kent Centennial Center (400 W. Gowe Street, Kent, WA 98032)
March 19, 11:00 am (No public comment period)	Kent Centennial Center (400 W. Gowe Street, Kent, WA 98032)

## Governance Discussion Items

### **Conflicts Between Governing Documents:**

Trumping provisions (*In process*)

### **Amendment of Governing Documents:**

Method for amending covenants (*In process*)

Method for amending bylaws, rules and policies?

Should owners be given additional voting rights concerning bylaws, rules and policies (e.g., the right to amend, the right to approve or to ratify board-promulgated amendments, or the right to veto board-promulgated amendments)

Potential change to RCW 64.38.010(2) – Nancy’s 12/29/06 email

### **Association Meetings:**

Should we attempt to resolve conflicts between statutes for advance notice of annual and special meetings

Notice of meetings: Should we permit notice to be given electronically?

### **Association Special Meetings:**

Should we consider mandating scheduling mechanisms for special meetings called by members?

Should we change the percentage vote required to call a special meeting?

### **Member Voting:**

Should there be any mandatory requirements concerning cumulative or non-cumulative voting?

Should changes be made to the Act concerning the method in which votes are conducted (e.g., in person, by ballot, by secret ballot, by email, etc.)

### **Recall of Directors:**

Should the process for removing board members be made easier?

Should we attempt to resolve the existing conflicts/ambiguities in the Act and the nonprofit statutes?

Should recall provisions be made mandatory? Or should variation be allowed in the governing documents?

### **Communications:**

Are there mechanisms that can/should be imposed statutorily to facilitate better communications between association members and leaders?

### **Rule Enforcement:**

Should we change RCW 64.38.020(11)? – Nancy’s 12/29/06 email

**COMMITTEE MEMBERS:**

*Present:* Todd Hobert, Terry Leahy, Sandy Levy, Marion Morgenstern, Steve Rovig, Nancy Rust, Madge Shotwell  
*Absent:* Karen Fraser, Michelle Ein  
*Vacant:* Position for Member of the House  
*Quorum present?* Yes

**PROCEEDINGS:**

*Meeting Called to Order* at 11:00 am. Minutes of the December 4, 2006, meeting were unanimously approved with the insertion of the phrase “(via telephone”) after Madge Shotwell’s name. The December 18, 2006, meeting minutes were unanimously approved without change.

**OLD BUSINESS/PENDING ITEMS:**

1. **Public Comments.** Marion called the Committee’s attention to the public comments received so far on Proposals 1 and 2, which she posted to the Yahoo site.
2. **Mandatory Mediation Proposal.** The Committee reviewed the previous mandatory mediation proposal. Members identified and discussed several potential problems concerning the scope of the proposal, as well as drafting issues. The Committee unanimously agreed to defer further consideration and action on the mediation recommendation until the January 22 meeting.
3. **Buyer Disclosure Pamphlet.** Steve and Terry have exchanged drafts and are still intending to forward a joint draft to the Committee during the week of January 15 for discussion at the January 22 meeting. (Committee members are asked to review the draft and distribute comments via email in advance of the January 22 meeting.)

**DISCUSSION – GOVERNANCE ISSUES:**

The Committee reviewed the list of possible governance issue discussion items attached to the meeting agenda. The Committee decided to begin its work on governance issues with the topic of amendment of governing documents. Following lengthy discussion, the Committee made the following decisions by consensus:

1. **Obligation of Good Faith:**

For reasons discussed during the meeting, the Committee unanimously agreed to recommend the addition of the following language to the Homeowners Association Act: “Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.” This language is taken verbatim from the Washington Condominium Act, RCW 64.34.090.

2. **Process to Amend Covenants:**

The Committee unanimously agreed to recommend that statutory language be added to the Homeowners Association Act to mandate that covenants recorded after the effective date of the statute can be amended with the approval of 67% of the total votes in the association, or any larger percentage specified in the covenants, and to permit the homeowners to approve an amendment through a combination of votes conducted during meetings or through a written consent process by mail. To be effective, all covenant amendments must be signed by an officer of the association, acknowledged, and recorded in the records of the county in which the property is located. This provision is intended to operate prospectively and to apply only to covenants recorded after the effective date of the statutory change.

The Committee considered and rejected the concept of permitting homeowners to approve covenant amendment approvals via electronic mail. Because covenants contain restrictions affecting homeowners' abilities to use their properties and must be recorded, and there are still too many technical issues with voting by email, it was felt that the process for adopting amendments should be more formal and that owner approvals should be given in a manner that permits easier verification. The Committee also considered the concept of establishing different voting requirements for different categories of amendments. The Committee rejected the concept due to the difficulty of adequately describing categories of amendments and the desire to avoid creating additional ambiguity and uncertainty.

3. **Challenges to Covenant Amendments:**

The Committee agreed to recommend that the following language, from § 2-117(b) of UCIOA, be added to the Homeowners Association Act: "No action to challenge the validity of an amendment adopted by the association pursuant to RCW 64.38.\_\_\_\_ (the section dealing with amendments) may be brought more than one year after the amendment is recorded." The Committee has not yet determined whether this provision should apply only to amendment of covenants recorded after the effective date of any changes to the Act, or if it should apply to amendments of covenants recorded both before and after the effective date of changes to the Act.

4. **Judicial Relief from "Illegal Covenants":**

- (a) **Problem:** As the Legislature previously noted, many covenants contain illegal provisions, such as racial restrictions. These restrictions are no longer legally enforceable but the fact that they exist in recorded documents is offensive to many and can cause title insurance problems.
- (b) **Tentative recommendation:** The Committee supports amending the Act to provide a method for members of an association with illegal covenants to petition a court for appropriate relief. The details of this procedure still need to be worked out and agreed to by the Committee before this can be considered an "official"

Committee recommendation. The Committee will use legislation introduced in prior sessions as a starting point for further discussion.

5. **Judicial Relief from Onerous Covenant Amendment Requirements:**

- (a) **Problem:** Many covenants impose very high voting requirements (75%, 90% or 100%) for amendments. Unnecessarily large voting requirements limit the homeowners' collective ability to change the covenants to meet changed circumstances and community needs (e.g., eliminating mandatory requirements that owners use cedar shake shingles on roofs).
- (b) **Tentative Recommendation:** The Committee supports amending the Act to permit owners subject to covenants that impose a 75% or greater voting requirement to petition the courts to reduce the percentage vote required to adopt an amendment under certain stated circumstances. The details of this procedure need to be worked out and agreed to by the Committee before this can be considered a Committee recommendation. Steve volunteered to email draft language on this topic to the Committee members for review.

**NEW BUSINESS:**

**Public Comment:** The Committee received public comments from Tom Foley, David Fosmire, David Harrison, Andy Hingsberger, and Susan Randall.

Mr. Foley stated that he supports mandatory mediation, suggested that the mediation provisions needed "teeth" to deal with rogue boards, suggested that associations be required to pay the first \$100,000 of litigation defense costs to provide financial disincentives to litigation, suggested that a provision be added to the Homeowners Association Act that states racial covenants are invalid and unenforceable, and advised the Committee that there was an out of state court decision that stood for the proposition that covenant changes operate prospectively only.

Mr. Fosmire expressed concerns regarding Ms. Rust's participation on the Committee due to her status as a named plaintiff in a lawsuit currently pending against Innis Arden. He requested that the Chair forward to other Committee members a copy of his letter in response to the letter from Wayne Cottingham, another resident of Innis Arden. Mr. Fosmire also stated his support for a one year statute of limitations for challenges to covenant amendments, explaining that Innis Arden and its members were currently incurring great expense to defend a lawsuit against the association that challenges actions taken years ago.

Mr. Harrison provided general comments concerning the topic of board member actions.

Mr. Hingsberger mentioned that he was not provided with his association's governing documents until 1 day prior to closing and that he finds the covenants to contain a number of ambiguities. Mr. Hingsberger suggested that ambiguities in the covenants should be decided in favor of the homeowners. Mr. Hingsberger also discussed the topic

of recall of directors and suggested that the Committee not make it too easy for members to recall directors.

Ms. Randall addressed the Committee on the topic of challenges to amendments and suggested that new purchasers be permitted to challenge offensive amendments.

**NEXT MEETING:**

The meeting was adjourned at approximately 1:40 pm. The next meeting is on January 22, 2007, at the Kent Centennial Center.

Approved by the Committee on January 22,  
2007:

/s/

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Marion Morgenstern, Chair