

**HOMEOWNERS ASSOCIATION ACT COMMITTEE
MEETING AGENDA**

Meeting Date: July 23, 2007

Time: 11:00 am – 1:00 pm

Location: Burien Library, 14700 6th Avenue SW, Burien, WA 98166

11:00 CALL TO ORDER

Approval of minutes of July 9, 2007, meeting.

11:05 OLD BUSINESS/PENDING ITEMS

Governance Issues –Procedural Issues: Address and resolve statutory differences in calling and holding regular and special meetings, voting, recalling board members, etc. (see discussion item list below, Nancy Rust's July 12 email and Morgenstern chart)

11:30 NEW BUSINESS

1. FINAL ACTION on Proposal 2 – Internal Dispute Resolution (*Rust & Leahy*)
2. FINAL ACTION on Proposal 3 – Mediation (*Springer*)
3. FINAL ACTION on Proposal 4 – Covenant Amendments (*Levy*)
4. FINAL ACTION on Proposal 5 – Bylaw Amendments (*Levy*)
5. FINAL ACTION on Proposal 6 – Rule Making (*Morgenstern*)

1:00 ADJOURNMENT

Future Meetings

Date	Location
August 6 , 11:00 am (With Public Comment)	Kent Centennial Center, North and South Rooms 400 W. Gowe Street, Kent, WA 98032
August 20 , 11:00 am (Without Public Comment)	Kent Centennial Center, North and South Rooms 400 W. Gowe Street, Kent, WA 98032

FINAL MEETING

Governance Discussion Items

Conflicts Between Governing Documents:

Trumping provisions (*addressed in part 7/9/07*)

Amendment of Governing Documents:

Method for amending covenants (*addressed in Proposal 4*)

Method for amending bylaws (*addressed in Proposal 5*), rules and policies (*addressed in Proposal 6*)

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

Members’ right to propose changes to bylaws and rules to be considered at an annual or special meeting (*Nancy’s 7/12/07 email, included as Attachment 1*)

Rule Enforcement:

Should we change RCW 64.38.020(11)? – Nancy’s 12/29/06 email (*addressed, but see Attachment 4 for additional information*)

Association Meetings:

Should we attempt to resolve conflicts between statutes for advance notice of annual and special meetings (*addressed 7/9/07*)

Notice of meetings: Should we permit notice to be given electronically? (*addressed 7/9/07 – no action taken*)

The right to make a motion at the annual meeting without prior notice. (*Nancy’s 7/12/07 email, included as Attachment 1*)

The right to use Roberts Rules. (*Nancy’s 7/12/07 email, included as Attachment 1*)

Restrictions on holding private meetings. (*Nancy’s 7/12/07 email, included as Attachment 1*)

Association Special Meetings:

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

Include discussion re right of members calling the special meeting to set the agenda, time and place for the meeting and appoint the chair. (*Nancy’s 7/12/07 email, included as Attachment 1*)

Should we change the percentage vote required to call a special meeting? (*addressed 7/9/07*)

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? (*addressed 7/9/07*)

Should we attempt to resolve the existing conflicts/ambiguities in the Act and the nonprofit statutes? (*specific issues addressed 7/9/07*)

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?

Board Decisions: Should Board members be prohibited from making decision by email that should be made in public. (*Nancy's 7/12/07 email, included as Attachment 1*)

ATTACHMENT 1

From: Nancy and Richard Rust <ndrust@comcast.net>
To: HOAACCommittee@yahoo.com
Subject: [HOAACCommittee] Jan31 proposal and other requests
Date: Jul 12, 2007 3:02 PM

Members, Attached is my Jan. 31 revised proposal and a letter I sent to you in May. The 2nd page of the letter has a list of items that I hoped would be considered.

I havn't researched all the differences in the HOA statute and the business statute but in addition to the ones below and those covered in our meeting are: the right to make a motion at the annual meeting without prior notice, the right to use Roberts rules, and, I believe, the restrictions on holding private meetings.

On June 7, I sent this e mail to Marion in response to her request for additional items to be put on the agenda: Note the similarity to the list in the May letter.

We will be gone next week but i will be at the meeting.
Here are some additions I would like to see on the agenda:

The right for members to propose changes to bylaws and rules to be considered at the annual meeting or special meeting.

The right to a secret ballot.

The right to set the agenda, the time and place for a special meeting that the members have called. Also the right to name the chair of the meeting.

Board members should be prohibited from making decisions by e mail that should be made in public.

Nancy

On Jun 7, 2007, at 8:44 AM, Marion Morgenstern - HOAA Committee wrote:
Dear all:

Just a reminder that our next meeting will be held June 18 at 11:00 am at the Kent Centennial Center. I'm attaching a copy of the agenda and handouts for that meeting. A copy of the agenda has also been posted to the "Files" section. Please circulate any revisions you may have to the draft minutes before the meeting, and let me know if there are other issues you'd like to have added to the agenda.

Thanks,

Marion

From: Nancy and Richard Rust <ndrust@comcast.net>
To: HOAACCommittee Moderator
Subject: Comments
Date: May 4, 2007 11:13 AM
Attachments: [HOA5:3:07.pdf](#) [HOA5:3:07.pdf](#) [unknown-60 B](#)

Committee members. Attached are some comments from me on our work so far and a list of things that could be done to bring some balance between boards and members.

I will be there next Monday, but will miss the second May meeting. We will be in Italy and not be available by phone. I will be there for June and July meetings provided there are no more changes. I have a conflict with the 2nd August meeting but will try to come as it will be our last. Nancy here's the attachment:

May 3, 2007

Dear committee members:

Early in this process, I sent a message to Marion expressing my concern that the issues that brought some of us to the legislature may not be addressed. She assured me that the committee would get to everything. It was at the hearing on a bill introduced by Rep Ruth Kagi that I first met Madge Shotwell and David Harrison. Jay Garthwaite must have been there too. The bill turned into a study. It got out of committee but did not pass the house. The next year Senator Darlene Fairley took on the issue. Again we testified and wrote letters.

Before I say anything more, I need to report that at a hearing on summary judgement, the judge ruled in favor of the board. We have not decided whether or not to appeal.

A grave concern at the legislative hearings was that boards are assuming powers not in covenants by adopting rules and or bylaws. Running through all the specific issues addressed in those hearings was a desire to give some balance between boards and members. Currently the statute allows boards to make the rules, enforce the rules and serve as judge and jury.

So what have we done to provide some balance. Is it better or worse?

We spent a long time on disclosure. This will help new buyers, but the reason people wanted everything in disclosure is because of all the horror stories we heard. It does nothing to address the horror stories.

We adopted a one year statute of limitations. This tilts the balance to the Board.

We spent a long time on MDR. It's a good thing. But does it prevent boards, in their efforts to enforce covenants, from bypassing this process and imposing fines? So it does nothing to improve balance.

We adopted a measure that requires bylaws to be sent to the members but it takes a majority of all the members to reject. This was meant to help the members but is still a tilt toward the Board. Where in our federal, state or local elections is it required to have a majority of all eligible voters or even of all registered voters? The Innis Arden bylaws state the the board can amend the bylaws or they can be amended at the annual meeting or a special meeting. When previous boards did propose bylaw amendments to be adopted at the annual meeting it was always by those present in person or proxy. This amendment makes it more difficult.

We provided requirements for amendments to covenants for those HOAs filed after the effective date and created a way for the ones filed before the effective date to lower their requirements when deemed too high. These are neutral in regards to balance.

What can we do in the time that is left to improve the balance between the boards and the members and eliminate some of the horror stories?

We have already heard from Steve Yandl and David Harrison about the bylaw proposal that it is not just the bylaws it is the rules. I agreed to not send the rules to the members because I was thinking of the common areas and the rules could include open hours, rules for the pool etc. How would it be if we said the boards can adopt rules for the common areas but all other rules, regulations and policies must be sent to the members for their approval or rejection.

I am still hoping we can adopt my amendment to RCW 64.38.020 (11).

Members need to have the right to propose amendments to the bylaws at the annual meeting or special meeting providing adequate notice etc. without censor from the board.

Members should have the right to a secret ballot.

RCW 64.38.035 gives the members the right to call a special meeting. They also need to have the right to set the agenda, time and place, and appoint the chair of the meeting.

Board members should not be able to decide by e mail issues that should be decided in public.

RCW 64.38,025 (3) Makes it difficult for members to reject the budget. I know one of you remarked that the proposal for bylaw amendments would be similar to this. But this is one of the things we wanted changed. This was a particular concern of Madge Shotwell and the people in her association. Here the power of the board prevails over the members.

Sincerely,

Nancy

ATTACHMENT 2

✓ = Items dealt with @ 7/9/7 meeting

COMPARISON OF KEY DIFFERENCES

Issue	Homeowners Association Act (RCW 64.38)	Nonprofit Corporations Act (RCW 24.03)	Nonprofit Mutual & Miscellaneous Corporations Act (RCW 24.06)
Advance notice required for annual and special meetings of the association	Minimum 14 days; maximum 60. RCW 64.38.035(1).	Minimum 10 days; maximum 50. RCW 24.03.080(1):	Minimum 10 days; maximum 50. RCW 24.06.105:
Can notice of members meetings be given via email	No – RCW 64.38.035(1) requires notice of general and special meetings to be given by mail or personal delivery	Yes, by default. Notice can be given by email, mail, private carrier, personal delivery, fax, etc. RCW 24.03.080.	Yes, if specifically permitted by the articles or bylaws. RCW 24.06.105.
Percentage required to call a special meeting	10% of the votes. RCW 64.38.035(1).	1/20 th of the votes unless the articles or bylaws provide otherwise. RCW 24.03.075.	1/20 th of the votes unless the articles or bylaws provide otherwise. RCW 24.06.110.
Quorum for conduct of business at members' meetings	34% of the total votes present in person or by proxy at the beginning of the meeting, unless the governing documents specify a different percentage. RCW 64.38.040.	1/10 th of the total votes unless the bylaws specify otherwise. RCW 24.03.090.	Per Articles or Bylaws, but may not be less than 1/4 th of the total votes entitled to be cast. RCW 24.06.115.
Can elections and other votes be conducted by email	Perhaps, but budget ratification and removal of directors must be voted on in person or by proxy. RCW 64.38.025.	Yes – voting by email is allowed if Articles or Bylaws allow email voting. RCW 24.03.085.	Yes – voting by email is allowed unless Articles or Bylaws state otherwise. RCW 24.06.110.
Participation at meetings	Not directly addressed.	In person or by conference call unless otherwise restricted by the articles or bylaws. RCW 24.03.075.	In person. By conference call if the articles or bylaws so provide. RCW 24.06.100.

Issue	Homeowners Association Act (RCW 64.38)	Nonprofit Corporations Act (RCW 24.03)	Nonprofit Mutual & Miscellaneous Corporations Act (RCW 24.06)
Removal of directors	<p>RCW 64.38.025(4): "The owners by a <u>majority vote</u> of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause."</p> <p>(1) Is this provision intended to trump governing documents? It does not contain the same proviso as 64.38.025(1) – "Except as provided in the association's governing documents . . ."</p> <p>(2) Does removal require a majority vote of those present at the meeting? or a majority vote of all the voting power in the association?</p>	<p>RCW 24.03.103: "The bylaws or articles of incorporation may contain a procedure for removal of directors. If the articles of incorporation or bylaws provide for the election of any director or directors by members, then in the absence of any provision regarding removal of directors: (1) Any director elected by members may be removed, with or without cause, by <u>two-thirds of the votes cast by members</u> having voting rights with regard to the election of any director, represented in person or by proxy at a meeting of <u>members at which a quorum is present.</u>"</p>	<p>RCW 24.06.130: "A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation"</p>

ATTACHMENT 3

from Nancy Rust
7/9/7

Committee Action

Reconciling the different statutes

In general I think we should not require associations to amend their articles as they are hard to do and as with the covenants are part of what people are buying into. Bylaws and rules are too easy to change.

Advance notice: 60 and 14 days are reasonable. I suggest leaving it at that unless the articles say otherwise. I wouldn't say bylaws because the board might adopt a bylaw for longer than 60 days or shorter than 14.

addressed

E mail notification: I would be against it. There are some people still that don't have it. Computers go on the blink. People change their address. Could say no unless articles allow it.

Percentage to call special meeting: 10% is reasonable. Could say in less articles or bylaws provide for less. I wouldn't want a Board that is worried about a special meeting be able to pass a bylaw requiring more.

addressed

Quorum: 64.38 is already flexible. Change 34% to 1/3.

addressed

Can elections and other votes be cast by e mail: Same argument as before. Could say no unless articles allow it.

decided not to address use of email

Participation at meetings: 64.38.025 refers to in person or by proxy in (3) voting on the budget and (4) voting on a recall.

→ not addressed

Removal of Directors: Board members are elected by a majority of those present and voting. Their removal should be by the same vote. I would suggest adding unless articles provide otherwise. Don't say bylaws because a Board could vote to make it harder.

addressed

Answer to questions 2: 64.38 says a majority of those present in person or by proxy.

ATTACHMENT 4

Proposals from Nancy Rust - 12/29/06

From: HOAACCommittee@yahoogroups.com [mailto:HOAACCommittee@yahoogroups.com]
On Behalf Of rust_nancy
Sent: Friday, December 29, 2006 4:32 PM
To: HOAACCommittee@yahoogroups.com
Subject: [HOAACCommittee] Jan 8 meeting Governance

At the last meeting we agreed to start talking about governance. I would like the following possible amendments to 64.38 be discussed:

64.388.010 (2) includes in its definition of governing documents rules, regulations and bylaws that in many cases can be amended simply by a majority vote of the board of directors in addition to articles of incorporation and declarations of covenants which can only be amended by the conditions specified in those documents . I propose we amend this definition to include only those documents such as the covenants and articles of incorporation.

or

Amend 64.38.020 (11) so that after owners it reads: for violation of rules and regulations that implement the powers stated in the association's covenants.

or both

There also needs to be a section under bylaws stating that they can only be amended by a meeting of the members. Usually 2/3rds unless the governing documents specify otherwise.

Nancy Rust

Effect of proposed change to RCW 64.38.010(2): as revised, the statute would read:

(2) "Governing documents" means the articles of incorporation and declaration of covenants, conditions, and restrictions.

Deleted: ,

Deleted: bylaws, plat,

Effect of proposed change to RCW 64.38.020(11): as revised, the statute would read:

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the rules, and regulations that implement the powers stated in the association's covenants;

Deleted: , rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction

Deleted: bylaws,

Deleted: of the association

ATTACHMENT 5

From: rust_nancy <ndrust@comcast.net>
 To: HOAACCommittee@yahoogroups.com
 Subject: [HOAACCommittee] Change in my proposed amendment to 64.38
 Date: Jan 30, 2007 10:07 PM

I have reviewed the RCW some more and want to make a new stab at it. I am getting a little frustrated that this keeps going down on the agenda but it does give me another chance to re work. Here goes:

Again this is one of the issues in the suit where I am one of the plaintiffs.

RCW 64.38.010 (2) includes in its definition of governing documents, rules, regulations, and bylaws that in many cases can be amended simply by a majority vote of the board of directors in addition to articles of incorporation and declaration of covenants which can only be amended by the condiditons specified in those dpcuments.

I propose we amend this definition to include only those documents such as the covenants and articles of incorporation.

and (not or)

Amend RCW 64.38.20

(1) so that it reads: Adopt and amend bylaws.
 New (2)reads: Adopt and amend rules and regulations for the use of common properties and in order to implement powers granted in the covenants.
 Present (11) Amend so that after vioilations it reads: rules and regulations as in (2) above, provided that such powers are provided in the covenants.

I don't believe that boards should be able to assume powers that are not in the covenants by simply passing a rule or a bylaw. I know this is controversial but it is one of the most important changes that need to be made. For your information our board has just voted to spend up to \$10,000 for a lobbyist "to monitor the actions and recommendations of the

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Homeowners Act committee and speak on behalf of the Club's interest"

Still proposing that we amend RCW 64.38 to require that bylaws can be amended only by the members at a membership meeting. Usually 2/3 unless the governing document specify otherwise. (I left it alone above to take one issue at a time.) This is not part of the suit.

I have always believed that the bylaws belong to the members and not to the board. They should not be easy to amend.

According to Robert's Rules bylaws are an instrument which "...includes all rules that the society considers so important that they (a) cannot be changed without previous notice to the members and the vote of a specified majority (such as a two-thirds vote..."

Nancy Rust

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Effect of proposed change to RCW 64.38.020(1) and (2): as revised, the statute would read:

RCW 64.38.020 Association powers

Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws;

(2) Adopt and amend rules and regulations for the use of common properties and in order to implement powers granted in the covenants.

Deleted: , rules, and regulations

Comment [MEM1]:
Nancy, I'm fairly confident that I may not have understood your proposed change to RCW 64.38.020(2). Please give us a redline of the change you are proposing, if you are still proposing a change to this statute.

Effect of proposed change to RCW 64.38.020(11): as revised, the statute would read:

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the rules, and regulations for the use of common properties and in order to implement powers granted in the covenants, provided that such powers are provided in the covenants;

Deleted: budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners

Comment [MEM2]:
Nancy, I'm fairly confident that I may not have understood your proposed change to RCW 64.38.020(11) either, so if this is not what you intended, please give us a redline of the change you are proposing.

Deleted: bylaws,

Deleted: of the association;

Nancy, on the suggestion:

Still proposing that we amend RCW 64.38 to require that bylaws can be amended only by the members at a membership meeting. Usually 2/3 unless the governing document specify otherwise. (I left it alone above to take one issue at a time.) This is not part of the suit.

The Committee's work on the issue of amending bylaws is reflected in Proposal 5. If I were asked to vote on the above proposal, I would vote against it because it deprives the owners of the ability to vote on bylaws changes through the mail, or by a "written consent" process. As written, it would require a meeting of the association to be called, noticed, and held in order to change bylaws. I think that is too restrictive, and too burdensome on those associations whose governing documents already allow members to change bylaws by mail or written consent.

Marion