HOMEOWNERS ASSOCIATION ACT COMMITTEE
MEETING AGENDA

Meeting Date: April 16, 2007
Time: 11:00 am – 1:00 pm
Location: Kent Centennial Building

11:00 CALL TO ORDER

Approval of minutes of March 29 meeting.

11:05 OLD BUSINESS/PENDING ITEMS

1. **July Meeting Schedule**: Make final decision on changing July meeting dates from 7/2 and 7/16 to 7/9 and 7/23.
2. **Mandatory Mediation/ADR Process**: Approve Proposal 3 for public comment.
3. **Covenant Amendments**: Approve Proposal 4 for public comment.

11:10 DISCUSSION – GOVERNANCE & ECONOMIC ISSUES

1. **Amendment of Bylaws and Rules and Regulations**: Discuss procedures for amending Bylaws and Board-made rules and regulations. [*UCIOA excerpts are attached for your convenience*.]
2. **RCW 64.38.010**: Potential change to RCW 64.38.010(2) – [R*efer to Nancy Rust's 12/29/06, 1/30/07 and 2/1/07 emails, attached.*]
3. **Regular and Special Association Meetings**: See discussion item list.
4. **Voting**: See discussion item list.
5. **Economic Issues**: Develop issue list for discussion and recommendations on budgeting, assessments, and collection issues.

12:50 NEW BUSINESS

1:00 ADJOURNMENT

Future Meetings

Date	Location
May 7, 11:00 am (With Public Comment)	Kent Centennial Center (400 W. Gowe Street, Kent, WA 98032)
May 21, 11:00 am (Without Public Comment)	Kent Centennial Center (400 W. Gowe Street, Kent, WA 98032)
June 4, 11:00 am (With Public Comment)	Kent Centennial Center (400 W. Gowe Street, Kent, WA 98032)
June 18, 11:00 am (Without Public Comment)	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 ***(Addressed)***

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

Economic Issues

Budgeting:

Should HOA Act budgeting requirements apply prospectively only, or to all associations?
Should changes be made to existing statutory bugeting provisions?

Assessments:

Should "assessments" be statutorily defined? If so, what definition should be used?
Should declarants be required to pay common expenses until an assessment is levied and thereafter pay assessments for properties they own? Should declarants be permitted to exempt themselves from assessment obligations?
Should lien rights be governed by the Act, or left to the developer and owners to address in the covenants? If governed by the Act, what provisions should be recommended?
Should variation from any statutory provisions concerning liens be allowed? If so, under what circumstances?
Should the Act address the issue of imposing liens for unpaid fines? Or for charges other than regular and special assessments? Should these issues be left to individual communities to work out?

Collection of Assessments:

Should changes be made to the remedies available for collection of assessments, or fines, or other charges?
Should a statutory process be mandated? If so, what should it say?

Draft

Minutes of the March 29 meeting of the Homeowners Association Act Committee

The meeting was called to order by the chair, Marion Morgenstern, at 11:10 am in the Kent Centennial Center.

Members present were: Todd Hobert, Terry Leahy, Sandy Levy, Marion Morgenstern, Steve Rovig, and Nancy Rust.

Members absent were: Sen. Fraser and Rep. Springer

Members reviewed the draft minutes of the March 5, 2007 meeting and made corrections. M/S/P to approve the minutes as revised.

Morgenstern expressed a desire to have another Committee member assume the responsibility for drafting minutes of the meetings. Rust volunteered. M/S/P to appoint Rust as the Committee's new secretary.

Members agreed to tentatively set the July meetings on July 9 and July 23.

Further discussion was held on the draft Alternative Dispute (ADR) proposal. Morgenstern will e mail the final version containing additional refinements discussed during the meeting for Committee approval and then post for public comment.

M/S/P Morgenstern that we approve, with minor correction, the 3/26 draft proposal by Rovig on Judicial Relief from Onerous Amendment Requirements.

The members agreed not to recommend changes to the procedures for amending Articles of Incorporation, noting that existing corporations statutes address this issue.

The Committee discussed and rejected the concept of mandating a corporate form of entity for all homeowners associations. The Washington Condominium Act mandates that condo associations be incorporated, but UCIOA only mandates that an association be formed before the first unit is sold. It does not mandate a corporate form.

Leahy suggested that if there is an association that is not incorporated, a board should have the power to incorporate. A general discussion of the benefits of incorporating followed.

M/S/P Rovig to recommend the HOA Act be changed to authorize a homeowners association board to incorporate an unincorporated homeowners association as a non profit corporation.

A brief discussion of bylaws followed.

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Public Comment: The Committee received public comments from Jeffrey Dennison:

Mr. Dennison lives in the Shorecrest homeowners association in Mason County. He commented that in his association, members not in good standing do not have the right to vote. Fines are defined as assessments. He recommends the Committee statutorily define what assessment means. He stated that his association claims powers not in the covenants, and provided examples of foreclosure. Mr. Dennison stated that private government has more power than public government and asked whether homeowners associations have police power?

There was no further public comment and the meeting was adjourned at 1:30 PM.

The next meeting will be held on April 16, 2007, at the Kent Centennial Center.

Nancy Rust

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HOMEOWNERS ASSOCIATION ACT COMMITTEE

DRAFT

COMMITTEE PROPOSAL NUMBER:	3
SUBJECT:	MANDATORY MEDIATION
DATE OF PROPOSAL:	4/16/07
DEADLINE FOR RECEIPT OF PUBLIC COMMENTS:	**5/14/07**

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Introduction:

On November 14, 2006, the Committee tentatively agreed to recommend that mediation be required before an associations and their members could pursue litigation against each other for claims other than assessment collection. Thereafter, the Committee refined its recommendation and developed a set of procedures to implement its recommended mediation requirement. The Committee would like to receive public input on its mediation recommendations before making a final decision.

Deadline for Response:

Comments on this Revised Proposal No. 3 must be received by the Committee by **May 14, 2007**. Please direct comments to any member of the Committee or via email to: *hoaacommitteechair@ mindspring.com.*

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Proposal:

Add new sections to the Homeowners Association Act, using appropriate statutory language to be drafted later, that imposes a pre-litigation mediation requirement for disputes or claims involving the governing documents between homeowners, or between homeowners and their associations:

With the exception of the claims listed below, claims between homeowners or between homeowners and their association which involve the governing documents must be submitted to mediation before any party may pursue the claim through court proceedings.

A. **Exemptions**. The following categories of claims are exempted from this pre-litigation mediation requirement:

(1) Claims in which the statute of limitations will soon expire, except that any party to the lawsuit can file a motion with the court requesting that the judge order the parties to mediate before allowing them to proceed with

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the lawsuit and temporarily staying the litigation proceedings pending the outcome of mediation.

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(2) Claims for injunctive relief, except that any party to the lawsuit can file a motion with the court requesting that the judge order the parties to mediate before allowing them to proceed with the lawsuit and temporarily staying the litigation proceedings pending the outcome of mediation.

(3) Claims for declaratory judgment.[1]

(4) Assessment collection and foreclosure claims.

(5) Claims for defects in construction of homes and other improvements, whether individually owned or part of the common areas.[2]

(6) Claims that involve parties who are not subject to the covenants – i.e., claims that involve parties who are not either the association or members of the association.

(7) Claims between members of the association where the claims are not related to the governing documents.

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(8) Claims or issues that have been the subject of a previous mediation Request, Response or mediation conference pursuant to [this statutory provision] within the earlier of 12 months of the date of the most recent Request, Response, or mediation conference.

B. **Statutory "Default" Process and Presumption**: The following process is recommended to be implemented by statute as the default ADR process. Associations may, but are not required to adopt this process in their governing documents. If an association does adopt the statutory default process, then any mediation undertaken in accordance with that process will be presumed to be reasonable.

[1] The Committee discussed the concept of allowing any party to ask the court for an order enforcing a mediation requirement for declaratory judgment claims. The concept was rejected because claims for declaratory judgment concerning the governing documents go to the very heart of the parties' rights and their obligations to one another and should therefore be decided first, and by a judge.

[2] This requirement is intended to exempt disputes between builders and buyers, or builders and the homeowners association, for construction defects. It is not intended to exempt disputes between associations or their members concerning architectural or design revision provisions in the governing documents,

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C. Procedure for Statutory Default Process:

(1) The party requesting mediation ("Requestor") must submit a request for mediation ("Request") to the other parties ("Recipient(s)").

(2) The request can be made in any form (writing, email, fax, etc.) provided that the Requestor can prove the request was received by the Recipient.

(3) If mediation occurs, it shall be conducted by 1 mediator, unless the parties otherwise agree. The mediator shall be selected as provided below. Unless all parties to the mediation agree otherwise, the mediation conference must held within 90 days of the date the Request is received by all Recipients.

(4) The Request must state the issues the Requestor wishes to mediate, certify that the Requestor is willing to meet in good faith, and provide full contact information (name, address, phone, fax, email) for the Requestor's proposed mediator.

(5) No later than 30 days after the Request is received by all Recipients, the Recipients must respond to the Requestor. The Response can be made in any form (writing, email, fax, etc.) that enables the Recipient to prove that the Response was received by the Requestor.

(6) If the Recipient agrees to mediate, the Response must include a statement of any additional issues the Recipient wishes to mediate, a statement whether the mediator proposed by the Requestor is acceptable to the Recipient and, if not, contact information for an alternate mediator proposed by the Requestor. If the Recipient does not agree to mediate, the Response must so indicate and must include a statement of the reasons that the Recipient declines to mediate.

(7) The Requestor must reply (the "Reply") to the Response within 15 days of receiving the Response. If the Response identifies additional issues the Recipient wishes to address at mediation, the Reply must state whether or not the Requestor agrees to mediate those issues. If the Requestor does not agree to mediate those issues, _____
[I'm sorry, but I don't remember how we resolved this. Does the mediation go forward only on the Requestor's issues? Or does the Requestor now have to decline mediation and withdraw the request for mediation?]

(8) If the Recipient has proposed an alternative mediator, the Reply must state whether the alternate mediator is acceptable to the Requestor. If not, the Requestor must contact the two proposed mediators within 15 days of delivering the Reply to ask them to choose a third person who is available within the timeframe required [by this section of the statute] to act as mediator.

(9) Unless the parties agree otherwise, the fees and costs of mediation will be shared equally by all parties to the mediation. If the mediator requires pre-payment of all or a portion of the anticipated fees and costs all parties to the mediation must comply with that requirement. These fee and cost provisions supersede any inconsistent provisions in association governing documents.

(10) The mediator may, but need not be, an attorney or judge. The mediator's primary function is to assist the parties in communicating with one another and to find ways to resolve the disputed issues by agreement.

D. **Consequences of Declining Mediation Request**: Although the intent of this section is to encourage mediation before either party may litigate, it is recognized that there are legitimate reasons for one party or the other to decline mediation. For that reason, either the Recipient or the Requestor can decline mediation. If mediation is declined, or a party fails to participate in a scheduled mediation conference, the other party may proceed with filing a legal action. That party may ask the Court, and the Court is authorized to:

(1) Enter an order compelling the parties to participate in a mediation conference if the Court determines that mediation would be productive or useful,

(2) Impose appropriate remedies for a party's unjustified failure to mediate claims subject to mandatory mediation requirements imposed [under this section] including, without limitation, requiring that party to pay all mediation fees and costs charged by the mediator, reimburse the plaintiff for the costs of filing suit, reimburse the plaintiff for process service costs, and reimburse the plaintiff for some or all of plaintiffs' attorneys fees and costs. This fee and cost shifting authorization is intended to supersede any inconsistent provisions in association governing documents (covenants, articles of incorporation, bylaws, rules or policies).

HOMEOWNERS ASSOCIATION ACT COMMITTEE

DRAFT

COMMITTEE PROPOSAL NUMBER:	4
SUBJECT:	GOVERNANCE – COVENANT AMENDMENTS
DATE OF PROPOSAL:	4/16/07
DEADLINE FOR RECEIPT OF PUBLIC COMMENTS:	**5/14/07**

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Introduction:

On January 8, 2007, the Committee began discussing the problems and challenges faced by homeowners and associations in amending covenants. During this and the next several meetings, the Committee adopted various recommendations concerning the amendment of covenants. Before approving its final recommendations, the Committee would like to receive additional public input and comment on the recommendations below.

Deadline for Response:

Comments on the recommendations in Proposal No. 4 must be received by the Committee by **May 14, 2007**. Please direct comments to any member of the Committee or via email to: *hoaacommitteechair@ mindspring.com*.

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Proposals:

1. **Obligation of Good Faith**:

   Recommendation: The Committee recommends the following language, taken verbatim from the Washington Condominium Act, RCW 64.34.090, be added to the Homeowners Association Act:

   > RCW 64.38._____ - Obligation of Good Faith.
   >
   > Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

2. **Process to Amend Covenants Recorded After the Effective Date of Any Changes to the Act**:

   (a) Problem: Unlike condominiums, no statute exists that specifies a minimum or maximum vote requirement for changes to covenants. This leaves developers and

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their counsel without guidance. As a result, covenants are drafted that (a) do not specify how amendments can be made, or (b) require unanimous consent to adopt amendments. This leaves associations and their members without the practical ability to change their covenants to reflect changed circumstances, changes in technology or changes in the community's values, policies or priorities.

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(b) Recommendation: The Committee recommends that the Homeowners Association Act be amended to:

(i) Mandate that covenants recorded *after* the effective date of the statute[1] can be amended with the approval of 67% of the total votes in the association, or any larger percentage specified in the covenants,[2]

(ii) Permit the homeowners to approve an amendment through a combination of votes conducted during meetings or through a written consent process,[3] and

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(iii) Require that 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 to be effective.

(c) Goal: The new statutory provision is intended to provide uniformity in the drafting of covenants and to provide homeowners with the flexibility to periodically change the covenants. The required 67% approval is high enough to make covenant changes difficult, but not impossible and is based on § 2-117 of the Uniform Common Interest Ownership Act ("UCIOA"), which adopts a minimum vote of 67% for covenant changes.

[1] This provision is intended to operate prospectively, and to apply only to covenants recorded after the effective date of the statutory change.

[2] The Committee 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] 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.

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3. **Process to Amend Covenants Recorded Prior to the Effective Date of Changes to the Homeowners Association Act**:

(a) Problem: Many existing covenants require exceedingly high votes of the homeowners to approve amendments. Many other covenants are simply silent on the process for adopting amendments and thus require unanimous consent. Such provisions frustrate the ability of the homeowners to change their covenants to meet current needs and desires.

(b) Recommendation: The Committee recommends that the Homeowners Association Act be amended to incorporate the following provisions for covenants that were recorded *prior to* the effective date of the new provisions:

> RCW 64.38._____ - Action to Reduce Voting Requirement for Amendment of Declaration
>
> (1) If the declaration of covenants, conditions and restrictions of a homeowners association requires more than 75% of the votes in the association to approve any amendment to the declaration, the homeowners association shall, if so directed by owners holding not less than 67% of the votes in the association, bring an action in the superior court for the county in which the real property subject to the declaration is located to have the percentage of votes required to amend the declaration reduced. The owners' decision to bring such an action may, notwithstanding anything to the contrary in the declaration, be made by votes cast at a meeting duly called, or by written consent, or by any combination thereof. The action shall be an *in rem* declaratory judgment action whose title shall be the description of the property subject to the declaration.
>
> (2) If the court finds that the percentage of votes set forth in the declaration is an unreasonable burden on the ability of the owners to amend the declaration and of the association to administer the property under its jurisdiction, the court shall enter an order striking such percentage of votes from the declaration and substituting in lieu thereof the percentage of votes which the court determines to be appropriate in the circumstances. In no event shall the court mandate approval of less than 67% of the votes in the association to amend any provision of the declaration.

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4. **Challenges to Covenant Amendments**:

(a) Problem: Unlike condominium declaration amendments, no statute exists that specifies a deadline for challenging amendments to covenants for communities subject to the Homeowners Association Act. This allows challenges to be brought years after an amendment has been voted on and recorded, when witnesses and evidence concerning the manner in which the amendment was adopted may not be as readily available.

(b) Recommendation: The Committee recommends that the following language, from § 2-117(b) of UCIOA, be added to the Homeowners Association Act:

> RCW 64.38.____ - Challenges to Validity of Amendments.
>
> No action to challenge the validity of an amendment adopted by the association pursuant to RCW 64.38.____ [the sections dealing with amendments] may be brought more than one year after the amendment is recorded.

(c) Goal: This provision is intended to apply to amendments to covenants recorded both before and after the effective date of the changes to the Act. By requiring homeowners challenging the validity or enforceability of an amendment to act promptly to obtain a ruling on that issue, this requirement will eliminate stale lawsuits reduce, and eliminate uncertainty over the enforceability and validity of covenant amendments, reduce potential title problems for buyers and sellers, and provide guidance for homeowners and their associations.

(d) Effective Date: 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 Homeowners Association Act, or if it should apply to amendments of covenants recorded both before and after the effective date of changes to the Act, and welcomes public input on this issue.

From: rust_nancy <ndrust@comcast.net>
To: HOAACommittee@yahoogroups.com
Subject: [HOAACommittee] 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

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

From: Nancy and Richard Rust <ndrust@comcast.net>
To: HOAACommittee-owner@yahoogroups.com
Subject: Re: [HOAACommittee] Change in my proposed amendment to 64.38
Date: Feb 1, 2007 12:18 PM

Toby, First I should say that current law allows a board to pass a rule or a bylaw by a simple majority of the Board and thus assume a power that is not in the covenants. In effect they can do something that should be done by amending the covenants. This is what has happened in Innis Arden and in other communities. I want to change that. I don't think the Legislature meant to allow that to happen. Referring the changes to the voters would still not be enough, however, because the requirements for changing the covenants are different in our case and probably in others. My bylaw amendment proposal is separate.

Yes I realize that there is a difference between rules for common areas and individuals. My first draft lumped the 2 together by just adding in order to enforce the covenants. Then I realized that enforcing the covenants has nothing to do with the common areas and rules for them are not enforcing the covenants.

No I would not change the quorum. If proper notice is given, people show up if things are controversial. Nancy

On Jan 31, 2007, at 5:20 PM, Toby Nixon wrote:

> I must admit I was a bit surprised when I first discovered that in our association the board could amend the bylaws by a simple majority vote. It has not been abused -- we've only adopted bylaws that set policies for covenant enforcement that are less stringent than what the covenants specify (i.e., using the board's discretion to not enforce covenants under certain circumstances, but without impacting on homeowners' powers to individually enforce if they desire). I believe in every case we could have obtained a vote, even a supermajority vote, of the members to support these policies, since they allow homeowners to do things that a strict interpretation and enforcement of the covenants would not let them do. The only challenge would have been the quorum requirements.
>
> Nancy, would your proposal require a higher quorum than the bylaws require for other business? Our bylaws (the original, not modified by the board) require only a 10% quorum to conduct business at a general or special meeting of members, except for certain specific issues that the covenants, bylaws, or articles of incorporation call out as requiring supermajority support of the full membership (things like exceeding the debt limit, annexing additional properties, mergers, mortgaging the common areas, dedicating common areas to the public, or dissolving the association). Would you propose that amending the bylaws be on that list of items requiring a certain level of support of the full membership, or would it be something that could be undertaken by a regular or special meeting of members using the same quorum requirement as other business?
>
> Also, with regard to rules and regulations, our covenants allow the board to adopt, by simple majority vote, rules governing the use of the Common

Areas,
but NOT any additional or more stringent rules governing the use of individual lots. I think it makes sense to treat separately the board's ability to pass rules regarding use of Common Areas (simple majority by the
board), and adding or strengthening rules regarding use of individual lots (which I think would be a covenant amendment, which in our case requires a
petition signed by 75% of the homeowners). Do you agree with this idea of
giving the board greater authority to set the rules over the common areas?

-- Toby

-----Original Message-----
From: HOAACommittee@yahoogroups.com
[mailto:HOAACommittee@yahoogroups.com]
On Behalf Of rust_nancy
Sent: Tuesday, January 30, 2007 9:08 PM
To: HOAACommittee@yahoogroups.com
Subject: [HOAACommittee] Change in my proposed amendment to 64.38

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getting a
little frustrated that this keeps going down on the agenda but it does give me another
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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
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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

From: rust_nancy <ndrust@comcast.net>
To: HOAACommittee@yahoogroups.com
Subject: [HOAACommittee] Jan 8 meeting Governance
Date: Dec 29, 2006 5:32 PM

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

Messages in this topic (1) **Reply** (via web post) | **Start a new topic**

Messages | Members | Calendar

From: Nancy and Richard Rust <ndrust@comcast.net>
To: HOAACommittee-owner@yahoogroups.com
Subject: Re: [HOAACommittee] Jan 8 meeting Governance
Date: Dec 29, 2006 7:50 PM

My proposed changes to the RCW are to prevent a board from assuming a power that is not in the covenants. Mr. Harrison' group are fining people for speaking in public. Innis Arden is fining to enforce covenants but the covenants do not give them the power. In fact they are amending the covenants by adopting a bylaw. They think RCW 64.38 gives that power. I don't believe the Legislature meant to give Boards a power that is not in the covenants.

The second is about bylaws changes in general. I have been on many bylaw committees and have helped new organizations write bylaws. Bylaws should be difficult to change and should be written with that in mind. Read Roberts Rules.

On Dec 29, 2006, at 5:49 PM, Toby Nixon wrote:

> Nancy, can you explain to us what it is that you're trying to accomplish with these amendments? It sounds like you don't want a board to be able to create, on its own, new rules and regulations for which they can then charge fines for violations -- that you want it to require a vote of the homeowners itself to create something new that would be considered a violation. Is that correct?
>
> In our association, the bylaws and rules can be amended by the board, but the board can be overruled at any time by a vote of the members at an annual or special meeting. I think that's better than always requiring a vote of the members for even a minor change to a bylaw, rule, or regulation. If you required a supermajority vote of the full membership for any change whatsoever, you effectively create paralysis in the association. Is there a compromise here that would preserve the ability of the board to respond quickly to changing circumstances but also provide an ability for the membership to rein in an out-of-control board or management company?
>
> -- Toby
>
> -----Original Message-----
> From: HOAACommittee@yahoogroups.com [mailto:HOAACommittee@yahoogroups.com] On Behalf Of rust_nancy
> Sent: Friday, December 29, 2006 4:32 PM
> To: HOAACommittee@yahoogroups.com
> Subject: [HOAACommittee] 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