



LAKE LIMERICK COUNTRY CLUB, INC,

790 E. St. Andrews Drive

Shelton, WA 98584

Phone (360) 426-3581, Fax (360) 426-8922, e-mail lakelim@hctc.com

BOARD OF TRUSTEES January 15, 2000

ROLL CALL:

President Dick Lombard called the meeting to order at 9:00 a.m. Trustees attending the meeting are, Vice President Darrell Winans, Secretary Scott Carey, Treasurer Bill Buff, Trustee George Buckley, Trustee Esther Springer-Johannesen, Trustee Nan Stricklin, and Trustee Mary Lou Trautmann.

Trustees absent are Trustee Gene Metz, Trustee Don Cox, and Trustee Ruby Bailey.

APPROVAL OF MINUTES:

Motion made by Tr. Darrell Winans, seconded by Tr. Mary Lou Trautmann, and carried by the Board as follows:

The Board of Trustees approved the minutes of December 18, 1999 as presented.

FINANCIAL REPORT: Bill Buff

Treasurer Bill Buff recapped the December Income and Expense Financial Reports. Tr. Mary Lou Trautmann noted the Great Hall floor covering check was voided. Simons & Simons Floor covering are going to replace the underlayment and vinyl because the seams are peaking. MaryLou released a partial payment for the carpet.

Motion made by Tr. Darrell Winans, seconded by Tr. George Buckley, and carried by the Board as follows:

The Board of Trustees approved the December 1999 financial reports.

Motion made by Tr. Bill Buff, seconded by Tr. Darrell Winans, and carried by the Board as follows:

The Board of Trustees approved the Consent Agenda with the following additions: 3. Maintenance, & Greens, Backhoe, 4 Water Radio Communications.

ITEMS FROM THE CONSENT AGENDA:

Consent Agenda Item 1. Election Committee – Sharon Haworth

Sharon reported four members are running for the Board of Trustees positions: George Buckley, Chuck Hancuff, Don Cox, and Tom Taylor.

Consent Agenda Item 2. Inn – Policies

Mary Lou Trautmann discussed the no smoking policy in the great hall.

Motion made by Tr. Esther Springer Johannesen, seconded by Tr. Darrell Winans, and carried by the Board as follows:

The Board of Trustees accepted the Inn Committee recommendation for a No Smoking Policy in the Great Hall, except on the decks.

The committee reviewed Hall Guidelines Policies for great hall use and cleaning.

The great hall vinyl will be replaced by Simon & Simon the week of February 21st. Friday, Jan 7th, Kelly LaMont, the installer, and both reps of the vinyl and underlayment were out to take flooring samples to send to the mills for inspection. The Board asked the Inn Committee to proceed with the total vinyl replacement, including the outer office and kitchen.

The New Year's buffet and dance were successful, 116 attended the dinner and 93 bought dance tickets.

Consent Agenda Item 3. Maintenance & Greens Committee – Backhoe

Darrell Winans had presented a memo listing backhoe repairs to be completed. The maintenance capital items steam cleaner, and camera will be purchased in January and will not exceed the budget.

Consent Agenda Item 4. Water Committee – Radios

Scott Carey had talked to Clark Sann who is doing the well radio modems. The radios are almost completed and it will be easy to add other sites.

OLD BUSINESS

1. St Andrews Drive – Road Repair

Mason County repaired the road wash out and will repave St. Andrews in the Spring. Rocks and gravel washed into the creek and subsequently into Lake Limerick. Mason County is responsible for cleaning up the debris in the Lake, and Mason County Conservation will revegetate the stream banks. Dave Chestnut, Maintenance Supervisor has documented everything with photos and is monitoring the progress.

2. Audit Status

Bill Buff reported our audit is still on going.

NEW BUSINESS:

1. Lot Sales – Status

President Dick Lombard said the club attorney recommended we notify the lot neighbors one more time, and consider any reasonable offer. We may publish the available lots in the Newsletter and asks for bids.

Motion made by Tr. Darrell Winans, seconded by Tr. George Buckley, and carried by the Board as follows:

The Board of Trustees authorized publishing in the Newsletter the lots for sale, and accepting the highest bids.

Bill Buff noted the capital gain on the lots sales must be reinvested within two years in a designated Capital Project.

2. Employee Health Insurance

President Dick Lombard noted the employee health insurance had increased from \$110.50 to \$116.00 January 1, 2000.

3. Transition Team Status Report: Board Member Positions

President Dick Lombard said the transition team established for reviewing policies and procedures for accommodating a general manager had met last night. The meeting was attended by Rob Wilson-Hoss, club attorney, Don Gardner, club accountant, Darrell Winans, Nan Stricklin, Bill Buff and Dick Lombard. The Agenda consisted of the following: 1) Hiring Procedure, 2) By Laws and Articles of Incorporation Change, 3) Committee Structure, 4) Announcements and Meetings, 5) Board of Trustees reductions and role, 6) Executive Committee dissolution, and 7) Water/ Utilities Structures. The ballot issues will be presented to the board in February, and published in the March Call to Annual Meeting Newsletter.

EXECUTIVE:

1. Web Page Status

Bill Buff reported Lake Limerick is registered on the Web, and he is working with the web page designer.

2. Inn Manager

Andreas Spaeth assumed the Inn Manager position as of January 1, 2000.

COMMENTS FROM MEMBERSHIP: None

CORRESPONDENCE:

Scott Carey read a thank you note from the office staff. Rob Wilson Hoss sent a Homeowner's Newsletter that Bill Buff recommends the board read.

ANNOUNCEMENTS: None

Recess 10:00 am

Motion made by Tr. George Buckley, seconded by Tr. Darrell Winans and carried by the Board as follows:

The board of trustees convenes to closed session regarding a personnel matter.

Motion made by Tr. Esther Springer Johannesen, seconded by Tr. Darrell Winans and carried by the Board as follows:

The board of trustees reconvenes to open session.

Motion made by Tr. George Buckley, seconded by Tr. Scott Carey and carried by the Board as follows:

The board of trustees grants Dennis Boelk leave of absence up- to 120 days.

Motion made by Tr. Esther Springer Johannesen, seconded by Tr. Scott Carey and carried by the Board as follows:

The board of trustees adjourned the meeting at 10:30 a.m.

Respectfully submitted, Scott Carey, Secretary
Preliminary Minutes not approved by the Board of Trustees, for review only.



BOARD OF TRUSTEES - LAKE LIMERICK COUNTRY CLUB

January 15, 2000 9:00 A.M.

- I. ROLL CALL:** Scott Carey
- II. APPROVAL OF MINUTES:** Board of Trustees Minutes of December 18, 1999
- III. FINANCIAL REPORT:** Bill Buff
- IV. CONSENT AGENDA:** (Committees)

Architectural Committee	Election Committee	Financial Advisory Committee
Greens Committee	Inn Committee	Lake/Dam Committee
Long Range Planning. Committee	Maintenance/Parks Committee	Nominating Committee
Security Committee	Water Committee	Youth Committee

(Reminder: non-smoking meeting, we will break every hour)

ITEMS FROM CONSENT AGENDA:

1. Election Committee – Sharon Haworth
2. Inn Comm. – New Year's Party
3. *Maint, Greens Backhoe*
4. *Water radio communication*

V. OLD BUSINESS:

1. St Andrews Drive – Road Repair
2. Audit Status

VI. NEW BUSINESS:

1. Lot Sales-Status
2. Employee Health Insurance Base Plan - \$116.00
3. Transition Team Status Report:
 - A. Board Member Positions

VII. EXECUTIVE:

1. Web Page Status
2. Inn Manager – Effective January 1, 2000
- 3.

COMMENTS FROM MEMBERSHIP:

VIII. CORRESPONDENCE:

IX. ANNOUNCEMENTS:

MOTION TO CONVENE TO CLOSED SESSION:

(The Motion must state Specifically the purpose for the closed session and must be referenced in the minutes)

X. CLOSED SESSION: Personnel Matter

(The closed session may only include matters dealing with personnel matters; legal counsel or communication with legal counsel; and likely or pending litigation of an owner to the association.)

XI. MOTION TO RECONVENE TO OPEN SESSION:

XII. MOTION TO ACCEPT ALL CLOSED SESSION MOTIONS:

(Motions or agreements made in closed session may not become effective unless the board, following the closed session, reconvenes in open meeting and votes in the open meeting on the closed session motions.)

III. MOTION TO ADJOURN MEETING:



**LAKE LIMERICK COUNTRY CLUB, INC.
PLANNING COMMITTEE
AGENDA**

January 14, 2000

4:30 PM

I. CALL MEETING TO ORDER

II. ROLL CALL

III. OPEN SESSION

1. Hiring Procedure
2. By Laws and Articles of Incorporation Changes
3. Committee Structure
4. Announcements and Meetings
5. Board of Trustees reduction and role
6. Executive Committee dissolution
7. Water / Utilities Structure

IV. Motion To Adjourn Meeting:

BACKHOE INSPECTION
1/15/00

On Saturday January 15th, 2000 Scott Carey and I performed an inspection on the LLCC backhoe to determine what repairs may be necessary to keep the hoe in good operating condition. This inspection was prompted by a request of the Executive Board. Upon inspection, we discovered some obvious repairs that will be necessary before a full inspection can be completed, they are as follows.

1. REPLACEMENT OF IGNITION SWITCH
2. REPAIR ALL DRIVING AND WARNING LIGHTS
3. REPAIR DASH PANEL

Once these repairs are made, Scott and I will perform a full inspection and submit a report to the board. I would request that Scott right a work order to Steve Cox to have these items repaired no later than 1/28/00

Respectfully submitted

Darrell D. Winans

Darrell Winans
Vice Pres.
Maint. Chairperson

cuBOT
kn
Steve
Dave

HOMEOWNERS' ASSOCIATION NEWS

INSIDE THIS ISSUE:

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Special points of interest:

- What Rules Apply?
- What Rules Should You Have?
- Responsibilities of a Board
- Creating Goodwill
- Dues and Assessments
- Architectural Violations
- Subordination/Lien Priority
- Rules, Regulations and Fines

MEMORANDUM TO CLIENT HOMEOWNERS' ASSOCIATIONS

1. INTRODUCTION

The purpose of this memorandum is to discuss certain aspects of advice that I give to my homeowners' association clients. I have given this advice to virtually all of my clients at one time or another, and thought it might be useful to go through some of this once more in writing.



2. WHAT RULES APPLY?

Homeowners' associations are subject to a number of different rules. This is in many ways quite similar to local, state and federal governments. For example, state government has the overall United States Constitution, the state constitution, statutes, administrative codes, court decisions, and other related rules that apply.

Homeowners' associations have their covenants, which are in some ways like their constitutions. They also typically have articles of incorporation and bylaws, which can be compared to state statutes. Many

homeowners' associations also adopt their own rules and regulations, which can be compared to administrative codes.

In addition, homeowners' associations are subject to two Washington State statutory schemes in particular. The first is RCW ch. 64.38, the Homeowners' Association Act; the second is RCW ch. 24.03, the Non-Profit Corporation Statute. Finally, homeowners' associations are also subject to appellate decisions in Washington State.

A board of directors should understand the rules that apply. Because the board of directors runs a non-profit corporation, the Washing-

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ton State Non-Profit Corporation Act applies. This statute has a few surprising twists and turns, so the board of directors should have access to the statute to make sure that it is being complied with. For example, a recent case about a homeowners' association in Mason County applied language from the Non-Profit Corporation Act that seems to require that committees be composed of board members, where the committees actually exercise the authority of the board of directors.

This would mean that architectural committees, park committees, and so on could not take action, without board ratification or approval of that action, unless the committees were composed of only board members.

I think that this problem has been solved by specific language in the Homeowners' Association Act at RCW 64.38.025. However, this point remains: the Non-Profit Corporation statute, RCW ch. 24.03, can be a trap for the unwary.

The second statutory scheme is the Homeowners' Association Act, RCW ch. 64.38. Every board of directors should have ready access to the terms of this Act. It establishes certain things that must be done on an annual basis, and a number of other rules that must be followed by homeowners' association boards.

In addition, it lays out the powers of homeowners' associations, at RCW ch. 64.38.020. I will refer to these later.

The board should also be very aware of the terms of its covenants. Each set of covenants is different, at least in my experience. The language of the covenants, as it applies to minimum square footage, business uses, nuisances, and so on, must be respected.

The articles of incorporation and bylaws usually establish the corporation, and

create systems for running the corporation. The terms of these must also be respected.

If a board wants to take an action that is contrary to a provision of the articles, bylaws or covenants, or any other governing documents, the board will probably have to amend the document in question. For example, if the board wishes to amend an article of incorporation, then the board will have to follow the language of the articles as to how they can be amended, or, if there is no such language, refer to the Non-Profit Corporation Act.

Often, covenants may not be amended, except by the unanimous written consent of all of the owners of affected property. If this is the case, usually it is impossible to make such amendments.

RCW ch. 64.38.020 provides that homeowners' associations have certain powers, "unless otherwise provided in the governing documents." Again, the governing documents include the covenants, articles, bylaws, plat, rules and regulations, any other written documents that the association has available to it that give the association authority to act.

This means that the primary restriction on the powers of homeowners' associations is to not conflict with current provisions of governing documents.

This poses an interesting question, one that I recently ran into for the first time. If a homeowners' association has a covenant prohibition against, for example, clotheslines, but has never enforced that covenant prohibition, then a common response will be that the association no longer has the authority to enforce its prohibition against clotheslines.

If the association then adopts a rule that says that, based on the advice of counsel, it no longer has the ability to enforce the covenant prohibition against

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clotheslines, so it is letting everybody know so that they can behave accordingly, it has just violated RCW ch. 64.38.020, which says that an association may take actions, "unless otherwise provided in the governing documents." And here, the governing documents provide that clotheslines are prohibited.

But what if the only clotheslines that have been unredressed in the past have been in back yards? Can the association now take action to enforce against clotheslines in the front yard, while leaving ones in the backyards alone?

To me, this is just common sense. What I think a homeowners' association ought to do in these circumstances is to take action that says that, our lawyer is telling us that we cannot enforce the rule against clotheslines in backyards. Therefore, we are not going to try to enforce that rule, because if we tried, we would lose a lawsuit, which would not be in the best interests of anybody. However, we have not lost the right to enforce the covenant against clotheslines that are in the front yard, so here is a rule that will tell our members exactly what we expect.

3. WHAT RULES SHOULD YOU HAVE?

It is very useful for a homeowners' association to adopt rules and regulations that make clear to members, and prospective members, what the expectations of the association are. These rules, of course, cannot change existing covenants, articles or bylaws, unless those documents are properly amended. However, they can supplement, explain, and add to the covenants, articles and bylaws, and other governing documents, so that people can clearly understand what is

permissible, and what is not. They can also create new rules, not addressed in the existing governing documents.

A good example would be lake rules. If a homeowners' association involves a lake, and the association has the authority to control what happens on the lake, either because of what the governing documents say, or because of the general powers of the association under RCW ch. 64.38.020, the association can adopt lake rules. This would include maximum speed limit, whether motors are allowed, times when water skiing is permitted, requirements to properly identify boats, and whatever else is appropriate.

Another example might be rules about the use of roads, if the roads are owned by the association and not dedicated to the county. Those rules can include the requirements that only licensed drivers are allowed on the roads, that they must provide proof of insurance, that they must follow certain speed limits and other rules of the road, and so on.

Boards of directors of homeowners' associations should listen carefully to what issues are raised by the membership, and look at those issues always as opportunities to create systems, or rules to clarify expectations. This does not mean that an association should adopt a million tiny rules about tiny problems. However, where a systematic approach would be helpful, then a board of directors ought to consider adopting such an approach.



MEMORANDUM TO CLIENT HOMEOWNERS'
ASSOCIATIONS**4. WHAT ARE THE
RESPONSIBILITIES OF A BOARD OF
DIRECTORS?**

Every board of directors thinks that its primary responsibility is to solve problems. This is wrong.

Boards of directors are like governments. We all dislike certain aspects of government. Most of these dislikes stem from a core concern, which is that the government is not listening to the people who are governed. Instead, governments "solve problems" for the rest of us by imposing decisions on us. Is this what we want from a homeowners' association board?

In my opinion, boards of directors have four primary responsibilities. The first responsibility is to identify issues. This is natural, since the issues come to the board of directors on a daily basis. When an issue is presented, then that issue must be dealt with, usually by the board of directors.

The second responsibility is to investigate the issue. For example, if the issue has to do with a concern by the Department of Health about water storage capacity, then the board needs to investigate what the laws and rules are for the State of Washington, what its engineers say, what the possibilities are, and so on. If the issue has to do with the problem of weed infestation in the lake, then the board needs to look to experts for advice about appropriate solutions.

The third responsibility is to educate the membership. Once an investigation has been undertaken, then the members need to be told the scope of the issue, and the results of the investigation. This process of education can be difficult. It can require public meetings, newsletters, postings, telephone calls, small committee work, and

so on. Each situation is unique, and boards are really only limited by their imaginations.

As a matter of practical reality, lines between the investigation and education phases often become blurred. If an investigation produces some interesting results, and those results are presented at a town meeting, the results of the town meeting may mean that the board needs to go back and investigate another aspect. When this other aspect is investigated, then it may need to be brought back to another town meeting.

The final responsibility of a board is to listen to its members. The town meeting and other educational approaches will produce responses from the membership. If the issues have been clearly framed, and properly investigated, the ideal result will be that the members then discuss what should happen. The result of that discussion will, in all likelihood, produce an answer that will become obvious.

This conception of the duties of a board of directors produces two primary results. First, in my opinion, it provides a much better opportunity for an intelligent answer, and the right answer, to issues that are raised, than simply having board members argue against each other about their positions at a board meeting.

Second, it helps to create what I call the operating capital of goodwill. Every time a member at a town meeting raises his hand and makes a suggestion, and that suggestion is incorporated into the next draft of a resolution of the problem, everyone who is at that town meeting feels that he or she has participated in and owns the solution to a certain degree. Goodwill is created, which is the most important capital that a homeowners' association can accumulate. More on this later.

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The problem with this approach is that it is not easy to engage the membership in the dialogue that I am advocating. I have heard over and over again boards of directors complain that they put a notice in the newsletter and nobody came.

A board of directors ought to spend most of its time and energy on its most important job. If a board of directors spends most of its time and energy on the job of educating the members, and listening to the members, then the system will work. Boards should understand that it is not good enough to simply put an announcement in the newsletter. You may have to go door to door to tell people to come to the meeting. You may have to call them on the telephone. You may have to do any one of a number of things to get people engaged. However, since that is the most important thing that the board does, you should spend a significant amount of your time and effort doing it. Again, a board is limited only by its own creativity in how to get people to participate in this process, and results will be achieved if people work hard enough for them.

5. GOODWILL OPERATING CAPITAL

Obviously, dollars and cents are operating capital for a board of directors, as expressed in a budget. However, in my opinion, the most important operating capital is goodwill.

Goodwill can be created in a number of ways. First, the board of directors should act as if it is truly representative of the membership.

When two or three members of a board of directors meet before a board meeting to discuss strategy about how to get their ideas accepted, they are acting as

politicians, and not representatives of the members. When boards of directors decide issues at secret sessions, people get suspicious, and rightfully so. On the other hand, when boards of directors make a genuine effort to represent the members, and bring the members into the process, then the members feel part of what is going on, which contributes to the overall goodwill.

Obviously, goodwill is created in many other ways. All employees and representatives of the board must treat members as members of the same community. This means that when a architectural problem arises as to the condition of a lot, the first response must be a friendly, face-to-face meeting with the member, to listen to his or her perspective, and to raise the possibility of some corrective action, in a friendly and compassionate way. One of the next responses of a board of directors ought to be to provide help to people who cannot clean up their yard by themselves, by work crews and the like.

Office employees must go out of their way to treat all members with courtesy and respect.

Obviously, some members are going to be problems. Such is human nature. When members appear to be irrational, and not willing to reach any kind of reasonable compromise, then boards need to understand that the underlying reason probably has to do with some life condition, or psychology of the particular member. It is important not to take the unreasonable positions of these members personally, and not to personalize any conflict with them. Systems should be in place to follow in such cases, and such systems should be used, without bitterness.

Boards of directors can create this goodwill operating capital in a variety of ways, again, only limited by their own

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creativity. This should be one of the overriding goals of any board of directors, and it should play an important role in virtually all contact with members.

I guarantee that the results will be remarkable. It has been my consistent experience that when enough goodwill is created, more people serve on committees, committees work more harmoniously, and boards can actually get to the work of helping to create a more pleasant living community, which is, after all, the goal.

When board members find themselves in conflict with other board members, and that conflict goes beyond the simple expression of different opinions, my reaction is that the conflict is a problem in and of itself. Members of boards can certainly have different opinions about how to achieve goals. In fact, dissent is the best friend of any board. It should be sought out and encouraged. However, if the forum for discussing those different opinions is open and fair, then the result will be reasonable, and if a board member happens to be on the losing end of a discussion, so be it. When that board member takes it further, and creates more significant conflict, so that the issue becomes personalized, then that board member is not serving the interests of the community, at least in that instance. Look for members to serve on the board who can listen, compromise and move on. Avoid those who like to argue for the sake of arguing.

6. DUES AND ASSESSMENTS

Dues and assessments collection is pretty much a matter of creating a system and sticking to it. My office works with boards so that the board administration makes a number of attempts to collect

delinquent dues, all the while considering that the person who hasn't paid is a member, who should be treated with courtesy and respect. When a lien has to be filed, it should be filed. But at all times, a board should be willing to consider a payment schedule, or other ways to address the problem. Many times, people on fixed incomes just have trouble making their payments. The board should not ever take the position of ignoring missed payments, but it should address those issues from the perspective that the person they are dealing with is a member.

When a collection comes to my office, we take the same approach, which is to make sure to continue to process the matter, but with courtesy and respect.

By the time we actually file a lawsuit, we have pretty much been able to address anybody who really wants to pay their dues and assessments, and the only ones we sue are those who simply have no interest in paying.

Another alternative to collecting dues and assessments is to use a collection agency. Advantages to using a collection agency are that they have the extra incentive for delinquent members that they can affect their credit ratings.

I am not necessarily a fan of making bad credit reports on people who are having trouble paying their bills. I am sympathetic to the concerns of many people that credit agencies and reports are often mistaken, and the whole industry is full of abuses.

Under either the collection agency approach, or using my office, the homeowners' association should work the file to the point where it is apparent that the member is not going to pay. If you use a collection agency, that agency will take a certain percentage of what it gets, and give you the rest. If you use my office, you pay

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for my services, but that amount is added to what is owed, so the association usually winds up with no net payout for collection services. My standard practice has been to provide free general legal advice, on a limited basis, to homeowners' association clients who also use my services to collect dues and assessments. Although I have not been as strict in applying this practice in the recent past, it is my intention to begin doing so from now on. My ability to provide free telephone advice, and other fairly brief work, is dependent on my ability to handle dues and assessment foreclosure cases. I am happy to work with homeowners' associations who do not ask me to do their collections. However, I will need to charge them for my other services at my regular hourly rate. If you wish further information about your choices, please call me.

7. ARCHITECTURAL VIOLATIONS

Every homeowners' association has some problem lots. Many associations have not enforced some of their covenants or other governing documents with respect to problems on lots. Therefore, a preliminary issue in some cases is how to start an enforcement policy.

The reasons for failure to enforce are often very obvious and understandable. Homeowners' associations in this part of the state were usually begun in the late 1950's, the 1960s, or early 1970s. Since then, they have been run by a handful of volunteers, who are typically overworked and underappreciated. There has been no real need for much of an administration, because the problems and issues have arisen tend to be fairly easily resolvable.

However, with increased development comes increased pressures for

the creation of systems. It becomes more difficult to respond, for example, to 300 residents as opposed to 50 residents. Over a period of time, the situation gradually escalates to where some provisions of the governing documents are not being particularly well enforced.

For clients in these circumstances, I usually advise that they take a look at the development, and make an inventory of which lots need correction. A board should then think real hard about which rules may be beyond its ability to enforce, because of failures to enforce in the past. This is always a very technical issue, and I should be consulted about particular subjects.

The board should then try to address the problem lots that can be easily remedied. For example, if senior citizens need physical help, I think the board should try to find a way to make that available. In every case, individual lotowners should be approached on a friendly, member-to-member basis.

Most of your problems will be resolved with this approach. The next level of problems that should be addressed are those where the board has a position that is legally supported, and although the member does not agree, the member is not willing to get involved in litigation to prove a point. These can usually be addressed, often with the help of our office.

After several months, or even a couple of years of this approach, you will be left with only a few lots where the problem is serious, the member has the ability and desire to litigate, and compromise is not a possibility. We will need to discuss each situation individually, but our experience is that courts are supportive of the rights of homeowners' associations to enforce their rules and regulations, and we have so far won all of these cases we have handled.

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As to the approach to be taken to individual problems after the system is already created, again, members should be approached personally, in a friendly way. The board should look to work out an arrangement that might provide for remediation over time, or some other compromise, so that the end result is appropriate.

Usually, this approach will work. In most of the cases that cannot be resolved this way, the member simply does not want to participate in a resolution. Oftentimes we hear members say that the board cannot tell them what to do with their property, or some other such concern.

This might be a good place to explain the costs and benefits of membership in a homeowners' association. Obviously, when a member buys a lot in a homeowners' association, that member agrees to be bound by the rules of the association. In Washington State, a recent case says that this includes an agreement to be bound by those rules as they are adopted in the future, as well as the rules that apply when the member buys.

This is, of course, an interference with what some members think are their "property rights." However, in return for that interference, they are provided the benefit of having all other members comply with the same rules, which can increase the value of their property.

Everyone who buys land in a homeowners' association does so with notice of the fact that some rules apply. Courts do not always give much credence to arguments that a homeowners' association rule is interfering with property rights, simply because that is a choice that the member made when the member bought a lot within the development.

8. SUBORDINATION/LIEN PRIORITY

This is one of the more complicated areas of my communications with our clients' boards. Basically, the issue has to do with how effective a particular homeowners' association can be in enforcing its rights to collect dues and assessments.

First, a board can usually collect dues and assessments in two ways. One way is to file a lawsuit to ask the member to pay the money. This is like any other civil suit, and, theoretically, results in a money judgment against the individual. This is what collection agencies can do.

However, money judgments are often hard to enforce. Therefore, most homeowners' associations have in their governing documents provisions that say that they can file liens against the property of a delinquent member and foreclose those liens if they are not paid. This means that if a member pushes things far enough, we can file a lawsuit, and presumably prevail. The result of a lawsuit will be that the sheriff sells the property. The homeowners' association will either get paid everything it is owed, including all attorney fees, costs and interests, or may even gain the benefit of equity in the lot, if no one else bids at the sheriff's sale.

These sales are the reason that, if the procedures that my office has developed are used consistently, we expect that the collection rate for all of our clients should be over 100%.

However, again, each association has a different system for enforceability of its liens. Some governing documents say that any first money mortgage is prior to the homeowners' association lien. This answers an important question posed by banks which is, if the homeowners' association lien is

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prior to the bank's lien, why on earth would the bank lend money to anybody to build, or buy, within such a development? Banks always need to be first on the list. If the homeowners' association lien is first, banks won't lend.

I have other clients who have governing documents that say that no matter what, the homeowners' association lien is prior, except that the board of directors can subordinate its lien. What this means is that the homeowners' association lien is first, however, if a bank wants to lend money for a purchase, or construction, it can ask the board to subordinate the association lien to its lien (usually deed of trust), which means the bank is then first, and the association is then second. This involves an active choice by the association, culminating in signing a legal document called a subordination agreement.

Interesting things happen when such a system is in place, and a title insurance company fails to tell a bank that they need to subordinate. Then, when the bank stops getting paid by its borrower, and goes to foreclose the loan, it finds out that it must also pay the association lien.

My latest thinking about this is that it would be very useful to have language in governing documents to the effect that the homeowners' association lien is prior to all other liens, except for purchase money liens, or construction liens, where a copy of the security document (usually deed of trust) is mailed to the homeowners' association within thirty days of execution.

This means that the board of directors does not have to constantly sign subordination agreements. Subordination is automatic, if the bank wants to lend for purchase or construction, as long as a copy is received at the office of the homeowners' association.

I have a couple of clients who have found out the hard way that this language can be critical. If, for example, the homeowners' association wants to foreclose a lien, and a bank lien is prior to the homeowners' association lien, then all we can do is foreclose the interest of the borrower, which means that we now own the property, subject to the loan from the bank. Few homeowners' associations want to pay bank loans. On the other hand, if the bank wants to foreclose its loan, and it is prior to the homeowners' association, then, when the bank forecloses its loan, the homeowners' association loses out entirely. This has happened in a couple of cases where we have started litigation to foreclose a dues and assessments lien, incurring expenses and costs, then the bank has done the same thing, and the bank wins, and our client is simply out.

I am enclosing a copy of a model rule which, at the request of one client in particular, I have tried to write in plain English. Apparently, the legalese that I provided earlier was totally undecipherable, so I am making an attempt to make it so that people can understand.

9. RULES, REGULATIONS AND FINES

Many of my clients have now adopted rules and regulations that supplement, explain and add to what is already in their other organizational documents, as we discussed above. A common response by some members is, **But you can't do that!**

Well, actually, you can. The statute is at RCW ch. 64.38.020, and it provides that associations can do pretty much anything that makes sense, again, "unless

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otherwise provided in the governing documents." Which means that associations can take any one of a number of specified actions, but also, they have "any other powers conferred by the bylaws;" "all of the powers that may be exercised in the state by the same type of corporation as the association;" and "any other powers necessary and proper governance and operation of the association."

This is an extremely broad grant of powers. In addition to this sweeping language, the statute contains the following:

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 the rules and regulations adopted by the board of directors, levy reasonable fines in accordance with the previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules and regulations of the association.

This allows homeowners' associations in Washington State to establish a system of administering rules that can include fines. The statute requires that the system must be adopted by the board of directors, and provided to the owners. The system should include two primary elements: a discussion of how the system is to work, and a list of offenses and fines.

As all of my clients have heard repeatedly, my advice is that any such system can only come from proper investigation, education of the members, and listening to what the members have to say.

The system should be informal, and both reasonable and fair. One way of looking at the fairness aspect is by asking this question: if my mother were going through this system, would I think it were fair? Your mothers do not have to necessarily agree with the result, but they should feel as if they were listened to, and that the process was fair.

Some systems have to be more complicated than others. For example, a homeowners' association with a significant problem with gangs, crime, and so on, may need to have more structure to its system than a small association that is primarily concerned with rare architectural rules and regulations violations.

If you do not yet have a system for architectural committee approval of plans, this would be a good place to include one.

What is important to remember is that the rules, and the system for enforcing those rules, should be balanced with the circumstances of a particular association. If there is no need for rules, then do not adopt rules. However, I often tell my clients that when issues arise, they should think about whether those issues might occur with other members, and if so, they should think about coming up with a system for resolving those issues. This can be very useful to members, who can rely on the system, and act accordingly. It can also provide the association with a consistent way to deal with similar problems over the course of time.

I cannot stress enough how important it is to have the systems, and rules, come from the membership through a series of discussion, town meetings, and so on. I have had the unpleasant experience of agreeing to write rules, and a system, for a homeowners' association. Although at the time my product was technically quite

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appropriate, there was no sense of ownership of the result by the membership, and it felt to them like an artificial set of arbitrary rules. Those rules were dumped, a two-year process to establish rules that were truly consistent with the desires of the members was undertaken, and the end product was actually very similar to my original proposal. However, when the members did it themselves, they felt a sense of participation in and ownership of the solution, which meant that they were supportive of the application of the rules.

I am attaching copies of four sets of rules for your consideration. I would be happy to talk further with you about this.

10. CONCLUSION

This has been a brief introduction to some particular subjects, and more important, to my general approach to the administration of the business of a homeowners' association. Sure, you are a government in many ways, but you can be a government that gets it right, for once. If you think of all of the complaints you have with local, state and federal governments, you can see that homeowners' associations can and should avoid almost all of them.

The reason is scale. You are a representational democracy, but your membership is small. You have the opportunity to address issues so that a proper investigation is completed, members get educated, and then the answer comes from a community process of discussing solutions. Certainly, once in a while the board will have to make a hard decision, but as long as the process is fair and reasonable, few will complain.

Through such processes, and the genuine commitment to respecting members' opinions and wishes, you can build up your working capital of goodwill. This goodwill brings with it a sense of involvement and ownership among most (not all!) of the members, which is what will allow you to work with them to achieve your ultimate goals - a better living environment.

