

The ASSOCIATION ADVISOR

A newsletter for HOA & COA leaders and representatives

A Primer Of The Law Behind The Annual Meeting

By Cynthia B. Jones

This time of year most board members of common-interest communities across the state of Washington, whether legally organized as condominiums or planned communities such as home owner associations (HOAs), are thinking about their legal obligation to hold the annual meeting of the association. If you are a seasoned board member or community association manager, undoubtedly you already have your plan of action in place. However, if you are newer to the process and want to know the source of your legal obligation to hold an annual meeting, read on. This article is for you. What follows is a basic primer on the legal requirements for annual meetings including: 1) Requirement to hold an annual meeting; 2) Notice requirements for meetings; and, 3) Other "annual" requirements.



REQUIREMENT TO HOLD ANNUAL MEETING

Simply put: An annual meeting of the association is legally required for both condominium and non-condominium associations. The Washington State Legislature organized the laws governing these entities under the Washington Condominium Act, Chapter 64.34 RCW and the Homeowners Association Act, Chapter 64.38 RCW.

Specifically, under RCW 64.34.332, condominium associations are directed by the legislature as follows: "A meeting of the association must be held at least once each year." Similarly, under RCW 64.38.035, HOAs are also mandated to hold an annual meeting. For those of you unfamiliar with how our legislature works or perhaps you are curious to see the law for yourself, it is easy to access on-line at <http://www1.leg.wa.gov/legislature>. Once at the website, simply click on "Find Laws & Rules" at the top right hand corner which leads to another box at the top of the page where you can enter the RCW that you are seeking. (For those of you afraid to ask, RCW simply stands for Revised Code of Washington.)

(continued on page 2)

Rafel Law Group Obtains Major Victory in Washington Supreme Court

By Robert A. Hyde

On July 16, 2009, the Washington Supreme Court filed its long-anticipated opinion in the matter of City of Woodinville v. Northshore United Church of Christ, et al.

Rafel Law Group represented the Northshore United Church of Christ ("NUCC"), a church in Woodinville that was asked to host Tent City 4 in 2006 by SHARE/WHEEL, the nonprofit company that operates Tent City.



NUCC promptly sought to obtain a permit from the City of Woodinville to host Tent City, but the City of Woodinville refused to even accept the permit, citing a newly-enacted moratorium on residential building. Apparently thinking that NUCC would host Tent City regardless of the permit, the City of Woodinville sued NUCC and SHARE/WHEEL in King County Superior Court claiming violations of zoning ordinances and breach of an earlier contract between the City and NUCC.

Over the City of Woodinville's objection, the King County Superior Court allowed NUCC to host Tent City pending an expedited trial on the merits. At trial, NUCC argued that its hosting of Tent City was a legitimate expression

(continued on page 2)

October 2009

Vol. 2, Issue 1

Rafel Law Group Website

[Click Here](#)

Recent News

August 2009

Anthony Rafel co-presents "The Nuts and Bolts of Commencing Cases in Federal Court from Filing to Discovery Conferences" for the Federal Bar Association of the Western District of Washington

[Click Here](#)

October 2009

Rafel Law Group sponsors CA Day

[Click Here](#)



seattle 206.838.2660

portland 503.808.9960

toll-free 800.596.1653

© Rafel Law Group 2009

A Primer Of The Law Behind The Annual Meeting

(continued from page 1)

NOTICE REQUIREMENTS

Amount of Notice

Cardinal rule number one: You must give members notice! And in a specific way and at a specific time - as set out by the legislature - in advance of your annual meeting. If you are a board member in a condominium association, you are obligated to inform the owners of the association not less than ten (10) days nor more than sixty (60) days in advance of any annual meeting date, under RCW 64.34.332. If you are a board member in an HOA, you must notify the owners of the association not less than fourteen (14) nor more than sixty (60) days in advance of the annual meeting date, under RCW 64.38.035.

Oh, and this is a good time to remind the newcomers to common-interest communities that budget meeting notice requirements may be greater than annual meeting requirements. You will want to consult your association's declaration and bylaws for specifics on budget meeting notice requirements.

Delivery of Notice

"Notices, Notices get your Notices!" Condominium association board members have a legal responsibility to ensure delivery of the annual meeting notice in the following specified way under the law: "[T]he secretary or other

officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner." See RCW 64.34.332. For larger condominium associations, board members may want to consult their community association managers about best practices to ensure timely delivery of such notices. Our firm represented a condominium association with 137 units and that particular board used pre-planning board meetings with time set aside for "mailing party" time so that the burden of delivering 137 notices did not fall onto one individual. HOA board members have the same exact obligation as condominium association board members; the only difference is that their obligation is mandated and organized under a different statute, specifically, RCW 64.38.035.

Electronic Delivery of Notice

"Email anyone?" With the onslaught of electronic media, it is no wonder that members would want their meeting notices sent via email. Well, boards, never fear, e-notices are here. Under Washington's Nonprofit Corporation Act, nonprofit corporations may send annual meeting notices electronically with certain restrictions. If your condominium association or HOA is a legal entity in the

(continued on page 3)

Rafel Law Group Obtains Major Victory in Washington Supreme Court

(continued from page 1)

of its Christian mission to offer food and shelter to those in need, but the King County Superior Court ruled against NUCC. The Washington Court of Appeals also ruled in favor of the City of Woodinville.

Three years after hosting Tent City, NUCC was finally vindicated when, in a unanimous decision, the Washington Supreme Court reversed the lower courts and held that the City of Woodinville violated the Washington State Constitution by refusing to allow NUCC to host Tent City in 2006.

In its opinion, the Supreme Court agreed with NUCC that the City's reliance upon its residential building moratorium improperly burdened the free exercise of religion: "[T]he City's total moratorium placed a substantial burden on the Church. It prevented the Church from even applying for a permit. It gave the Church no alternatives." The Supreme Court noted that the City could have sought "to impose reasonable conditions on the Church's project to protect the safety and peace of the neighborhood," but that the City instead "categorically prevented the Church from exercising what the City concedes is religious practice."

The case now returns to the King County Superior Court for further proceedings.

Rafel Law Group Website

[Click Here](#)



seattle 206.838.2660

portland 503.808.9960

toll-free 800.596.1653

© Rafel Law Group 2009

A Primer Of The Law Behind The Annual Meeting

(continued from page 2)

form of a nonprofit corporation (and most are) your entity is also governed under this act. Specifically, the Nonprofit Corporation Act was amended in 2004 to allow e-notice. The exact statute is RCW 24.03.009, and it provides that electronic notice is legally permissible only as to members who have given consent to receive electronically transmitted notices and only if the e-notice is delivered in accordance with the statute. Under the statute, consent by a member can be given either on paper (e.g., a letter or a facsimile) or by email, but consent cannot be given orally. The member's consent must designate "the message format accessible to the recipient" (e.g., email, web-based, facsimile) "and the address, location, or system" to which notices may be transmitted. See RCW 24.03.009. Consent to receive e-notices automatically includes consent to receive accompanying materials via electronic media as well (such as proposed budgets).

It is important to note that consent by a member to receive e-notices may be revoked at any time by writing or emailing the corporation. And consent is revoked automatically if two (2) consecutive notices fail to transmit or are unable to be transmitted to the member.

The e-notice is effective, per the statute, when it is transmitted to the address, location, or system designated by the recipient; or, it is effective when posted on an electronic network (such as an electronic bulletin board) and a separate record of the posting is delivered to the recipient together with comprehensible instructions on how

to obtain access to the posting. See RCW 24.03.009.

Content of the Notice

"What's in a notice?" The content of your meeting notice really does matter. Condominium association board members have a legal duty to ensure specific information is contained in the meeting notice to its members. Under RCW 64.34.332, "The notice of any meeting shall state the time and place of the meeting and items on the agenda to be voted on by the members... including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer."

HOA board members have a similar duty under the law. RCW 64.38.035 provides that "The notice of any meeting shall state the time and place of the meeting and business to be placed on the agenda by the board of directors for a vote by the owners... including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, or any proposal to remove a director."

OTHER "ANNUAL" REQUIREMENTS

Financial Statements and Audits

While we're talking "Annual Meeting," I thought you might appreciate knowing about other "annual" requirements

of your entity, whether you are condominium or HOA. First, every condominium association and every HOA must prepare a financial statement at least annually. The financial statement must be audited annually; however, the audit requirement can be waived in limited circumstances.

If you are a condominium association board member, you will want to review RCW 64.34.372 for details such as "The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant." The statute also addresses condominiums consisting of fewer than fifty (50) units whereby "an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant." In other words, condominiums with fewer than fifty (50) units must be audited too, but the audit can be waived by a vote of sixty (60) percent of owners other than the declarant, excluding those votes allocated to declarant-owned units. Also, a waiver vote must be taken annually in these circumstances. See RCW 64.34.372.

Under the HOA Act, the HOA must prepare or have prepared a financial statement of the association at least annually, but the law does not reference generally accepted accounting principles (GAAP). Financial statements of HOAs with annual assessments of \$50,000 or more must be audited annually by an independent certified public accountant. This audit may be

(continued on page 4)

**Rafel Law Group
Website**

Click Here



seattle 206.838.2660

portland 503.808.9960

toll-free 800.596.1653

© Rafel Law Group 2009

A Primer Of The Law Behind The Annual Meeting

(continued from page 3)

waived by a vote of sixty-seven (67) percent of owners at a meeting of the HOA at which a quorum is present. And like condominium associations, a waiver vote must be taken annually. See RCW 64.38.045.

Reserve Study

Effective December 1, 2008, all residential condominiums, including those formed under the pre-1990 Act, must prepare and annually update a reserve study, unless doing so would pose an unreasonable hardship. RCW 64.34.380. The requirements for the study are set forth in RCW 64.34.382. For a more detailed discussion of this new requirement, see the article by David Martin in Volume 1, Issue 1 of The Association Advisor.

Budgets

It is worth mentioning here that there is no requirement in either the Washington State Condominium Act or the HOA Act that an association's budget be revised annually. Under both Acts, condominium associations and HOAs are only required

to set a date for a meeting of the owners to consider ratification of a budget within 30 days after a proposed budget is adopted by the board. RCW 64.34.308 and 64.38.025. Also, it is worth mentioning that an association does not vote to reject a budget, rather "the budget is ratified [unless rejected], whether or not a quorum is present." Thus, there is no need to call for a motion to approve the budget because the board's budget is automatically ratified unless it is rejected. If a budget is rejected, the prior budget remains in effect until the new budget is ratified. By statute, a budget is rejected only if a majority of the total voting power votes to reject. RCW 64.34.308(3).

Finale

If you need more information on your responsibilities regarding the annual meeting or other annual requirements, be sure to contact Rafel Law Group and we'll be happy to answer your questions.

Free Initial Consultation and Document Review

Rafel Law Group continues to offer a free initial consultation to any association that is considering legal counsel. This consultation typically includes a complimentary review of the association's governing documents and a meeting with the manager or the Board. There is no obligation, so please don't hesitate to call or email us.

Contact Tony Rafel at
800-596-1653 or
arafel@rafellawgroup.com.

Rafel Law Group Website

Click Here



seattle 206.838.2660

portland 503.808.9960

toll-free 800.596.1653

© Rafel Law Group 2009