

COMMUNITY FOCUS

The Northwest's Full Service HOA Law Firm and Resource Center

VOLUME 1, ISSUE 1

NO MATTER WHAT THE QUESTION, EDUCATION IS THE ANSWER!

Homeowner association boards have long understood that the key to a healthy homeowner association is educating the owners about their responsibilities. Essential to that principle is education for the board members themselves.



Through their experience with our past HOA Forums, our attorneys and staff members have come to look forward to

For that reason, five years ago, Vial Fotheringham LLP and the Northwest HOA Law Center established its annual law forum. While every homeowner association is unique in certain ways, common problems affect all of them. The financial interdependence, the close proximity, and the unique social behavior of members of a homeowners association allow us to engage together in education that is both meaningful and productive.

Over the years, our forums have been very well received, with attendees reporting enthusiastically about the material presented, contacts made and education gained. Not only do we help associations get on the same page - we often find help is needed in getting on the same page - in the same book!

the opportunity that the Forum affords us - that of meeting with homeowner association members and boards, and other HOA service providers. Whether they are clients or are from associations that are new to us, we welcome the chance to renew friendships and forge new relationships. We especially look forward to new questions, new situations and that interesting dilemma that we haven't yet heard of. . . .that teaches us!

To that end, Vial Fotheringham LLP and the Northwest HOA Law Center is hosting its 5th Annual HOA Law Forum on Saturday, October 8, 2005. It will be held at the Wilsonville Holiday Inn, a central location right off I-5, and will feature subjects that are relevant to boards, members and service providers of homeowner associations, prepared and presented by attorneys and staff who have between them well over 100 years of experience in this field.

There will be the usual fun - yet crafted-to-teach - game prior to lunch. This has been a highlight over the years, with our more dramatic personnel leading the charge - learning with laughter is always a plus! A generous luncheon is included along with the registration fee for the NW HOA Forum. Breaks are well stocked with beverages and munchable treats to ensure that hunger doesn't distract participants from the subjects being discussed or questions being asked and answered. Additionally, our HOA publications, including *The Official HOA Handbook*, will be available for sale.

So - put it on your calendar: October 8, 2005 - Vial Fotheringham LLP and the Northwest HOA Law Center's 5th Annual Forum at the Holiday Inn in Wilsonville. A registration form is included with this newsletter. We welcome questions or comments - please direct them to Barbara Z. Kanz at 503-684-4111, or email her at bzk@vf-law.com.

Remember: no matter what the question, education is the answer!

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SPECIAL POINTS OF INTEREST:

- *Testimonials for Vial Fotheringham's Forum*
- *Vial Fotheringham's Forum Registration*
- *History of Vial Fotheringham*

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PRACTICE PHILOSOPHY



The sextant was, and remains today, one of the most ingenious tools ever devised for navigation. It allows anyone to locate their position on the earth by reference to the stars, the horizon, and the exact time of day. By using sextants, mariners have located safe shipping lanes and safely arrived at destinations for centuries.

At Vial Fotheringham LLP, we represent real people. We recognize that those people and the organizations they operate are inevitably more knowledgeable than we are about the larger issues of their organization's operation. However, they look to us to

assist them in finding safe legal avenues for achieving their desired destinations. We do this by using all of the available tools afforded us by modern technology. Online research of the latest legal updates and extensive industry involvement, along with common sense, allows us to effectively guide our clients with respect to their legal concerns.

Put simply, at Vial Fotheringham LLP we are dedicated to keeping our clients from running aground. Nothing is more frustrating than investing precious time and energy developing a business plan only to discover a legal im-

pediment which may prevent its realization. Our early involvement at the commencement of organizations, rather than later for the purposes of damage control, is one of the best ways we can help our clients stay off the rocks.

Please feel free to contact any of our staff, all of whom are committed to the sole purpose of fulfilling our mission: Helping clients navigate today's complex legal environment.

Every attorney at Vial Fotheringham maintains expertise in the practice of Homeowner Association Law.

"AT VIAL
FOTHERINGHAM
LLP WE ARE
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THE NORTHWEST HOA LAW CENTER

To better support our lawyers in legislative and law development matters, Vial Fotheringham LLP hired HOA expert Barbara Kanz in 2000, and formed the Northwest HOA Law Center. As a subsidiary to the law firm, the Law Cen-

ter publishes books and other materials on Homeowner Association Law, participates actively in legislative activities of all states where we practice, and holds educational seminars and forums. Please be sure to join us for our next

NW HOA Law Center sponsored event, The 2005 HOA Law Forum!!!

THE OFFICIAL HOA HANDBOOK



The Northwest HOA (Homeowner's Association) Law Center, a subsidiary of Vial Fotheringham LLP, produces The Official HOA Handbook so that board members, and other association members know the laws, policies and procedures regarding Homeowners' Associations. It is literally a "How-To" guide for running a

homeowners association in Oregon. Currently available for Oregon and Utah.

This brand new edition takes into account new legislation and laws pertaining to Homeowners Associations. Also available is Oregon's HOA Statutes with the Northwest HOA Law Center Index. Statutes included

are the Oregon Condominium Act, The Oregon Planned Community Act and the Oregon Non-Profit Corporation Act.

To get your copy, go to our website www.vf-law.com or call Barbara Kanz at:

503-684-4111.

THREE CHALLENGES THAT ALL ASSOCIATIONS FACE

Homeowner Associations (HOAs) are very prevalent across the United States, and Oregon is no exception. As with anything, there are positive aspects and challenging ones we face when dealing with an association. There seem to be three areas that are common to HOAs that can cause the most concern in an association: **CC&R enforcement collection of delinquent assessments, and architectural review*. Here are a few ideas that might help the Board when navigating through these waters.

CC&R Enforcement:

Enforcement of the CC&Rs must be fair and consistent. The courts do support the enforcement of rules and regulations, but you can't show partiality in your judgment. An example of this would be if a Board member violates the rules, then he needs to receive the same due process that any one else would in the HOA.

Collection of Delinquent Assessments:

- **Collection Resolution:**
Spend the money to get a collection resolution

written up. This will define the specifics in the collection process that your association documents may not have.

- **File and record liens:**
Even though the laws are changing regarding liens, it is important to get the lien filed and recorded. When the lien is recorded it will then be attached to the property. Remember that counties may have different requirements when filing liens. The county should have a web site that gives all the requirements for filing a lien.
- **Know when to fold 'em:**
Know when it's time to turn this over to a professional collection agency. Depending on how much time you want to spend on it, 90 days is typically a good time to start looking for some help.

Architectural Review:

This is a large area of concern because people routinely want to make changes to their property. Homeowners are often unaware that there are requirements they have to abide by before any exterior changes can happen.

- **Guidelines:** Have clearly defined Architectural Guidelines. They should be specific and not too long.
- **Remember your deadlines:** Most documents state that the Board has a specific timeframe in which to respond to a homeowner; make sure you adhere to it.
- **Document, document, and document:** If you change or deny an applicant be sure to clearly document the Board's decision.

The Board is made up of volunteers, and challenging situations like these can infringe on the enjoyment of life. To help alleviate the stress of these situations, the Board may want to seek professional help in the form of a management company. One great thing about a management company is that they take on these challenges so you don't have to.

~David Hummel~
Director of Management @
NW Community Management



*CC&R: covenants, conditions and restrictions

HOMEOWNERS ASSOCIATION BOARD OF DIRECTOR ORIENTATIONS: *WHAT IS IT, EXACTLY, THAT I AM SUPPOSED TO DO?*

"A BOARD OF DIRECTORS ORIENTATION IS AN EXCELLENT OPPORTUNITY FOR AN ASSOCIATION TO INTRODUCE NEW DIRECTORS TO HOMEOWNER ASSOCIATION GOVERNANCE"

Each year, numerous homeowners are elected to the boards of directors of their homeowners associations. Most directors blindly accept a position on the board with little explanation of their duties as a board member and without appreciation for the significance of the position. Instead of leaving new directors in the dark, associations should conduct an orientation meeting for new board members to provide basic information on homeowner associations and the responsibilities of a director. The following are suggested topics of discussion at a board of directors orientation.

HOA 101: Often new directors have little or no experience acting on a board of directors or running a homeowners association. One goal of a board of directors orientation is to provide new directors with basic terminology and definitions that are vital to understanding the operations and governance of a homeowners association. In addition, orientation should include basic information such as the purpose and collection of assessments, insurance, common property versus private property, maintenance of both common property and private property, and, perhaps most importantly, a close review of the documents that govern the association.

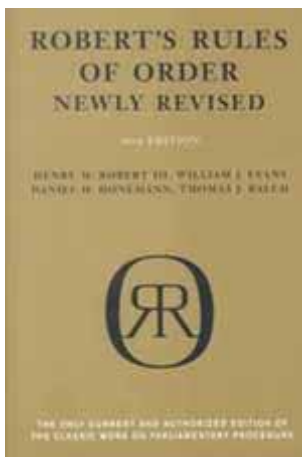
Governing Documents: Homeowners associations are bound by both federal and state law and their own governing documents. New directors should be introduced to the hierarchy of laws that regulate the association and should become familiar with the association's governing documents. At the highest level, the association must act in accordance with federal and state law. However, usually the most important and most relevant tool for governing an association is the declaration. A declaration, also known as the CC&Rs, is the primary governing document that creates the rights and obligations of owners in a homeowners association. Covenants within the declaration are binding on all owners. In addition to the declaration, many associations have bylaws that govern the operations of the association. Furthermore, previous boards of directors may have adopted rules and resolutions that are binding on all owners. It is imperative that new directors become knowledgeable about their association's governing documents so that they may efficiently and effectively govern the association.

Responsibilities of Board Members: New directors should also be given an overview of their responsibilities. In general, board member responsibilities include main-

taining, repairing, replacing, and supervising common property; designating and collecting assessments; paying common expenses; hiring and firing personnel who care for and operate common property; adopting and enforcing rules and regulations; and enforcing governing documents. Additionally, board members owe a fiduciary duty of good faith, fair dealing and loyalty to the association. Adherence to the fiduciary duty requires board members to, among other things, attend board meetings, actively participate in the board meeting by fully disclosing all relevant information to other board members, and to fully inform themselves about the board's decisions.

In short, a board of directors orientation is an excellent opportunity for an association to introduce new directors to homeowner association governance and impress upon them the seriousness and importance of their position, and at the same time promote uniform governance of the association and assure a smooth transition between boards of directors.

~Christopher M. Tingey~
Attorney @ Vial Fotheringham, LLP



RENTAL RESTRICTIONS

Rental restrictions are a controversial but effective means of restricting the number of units which can be rented in a community association.

From the perspective of owners who rent their units, rental restrictions are often perceived as an unfair restriction of property rights. By contrast, owners who live in their units fear that renters will reduce their quality of life and affect their property values. Many owner-occupiers fear that tenants do not take pride in their community and are less likely to be active in association affairs. Other owner-occupiers fear that their association will have difficulty enforcing standards of community behavior upon tenants who are naturally more transient than owners. Renters can also affect association finances. As the percentage of tenant-occupied units increases, associations pay higher insurance premiums and unit owners find it more difficult obtaining resale financing.

Associations can restrict the number of renter-occupied units in a variety of ways. Often, associations will adopt an amendment to their bylaws by a vote of a supermajority of unit owners. These amendments restrict the percentage of units rented to between 20 and 30 percent.

Associations with more than 30 percent of units rented find it much more difficult to obtain mortgage financing. This is the percentage at which secondary mortgage lenders designate a community association as non owner-occupied.

Another option is to pass an amendment limiting the maximum number of units that one investor-owner may purchase. This prevents any one investor from purchasing and renting a large group of units, while giving owner-occupiers the option to rent. Other associations have passed amendments which require a minimum period of occupancy before a unit owner may rent out his or her unit. This often deters investor-owners from purchasing units at the association.

In many associations, the Board of Directors is given discretion to grant unit owners the right to rent out their units because of special circumstances. This provides some leeway for owner-occupiers to rent out their units in the case of family or financial emergencies.

Whatever method an association chooses, rental restrictions should also require that renters receive a copy of the association's governing documents. In addition, the Board of Directors should insist

upon a copy of all rental agreements for the association records. Many times, problems can be resolved by clear lines of communication between the renters and owners. It is important that renters understand that the association's governing documents restrict their own behavior, not just the behaviors of their landlords.

Before passing a rental amendment, associations should take an honest look at the treatment of renters in their community. Are renters invited to social gatherings and association meetings? If not, owner-occupiers should be sensitive to renters' desire to be part of the community association. Renters should feel like members of the community rather than second class citizens. By fostering renter involvement, associations sometimes find that a rental amendment is not necessary. Renters who are active in their communities are likely to stay longer and take pride in their association. These simple steps may eliminate the need for a rental restriction.

~Jason Grosz~
Law Clerk @
Vial Fotheringham Law



WHY ATTEND THE HOA LAW FORUM?

"I have attended several law forums presented by Vial-Fotheringham, and each time I gained new insights and information that directly benefited my associations. While the benefit of receiving free legal counsel is wonderful, perhaps even more valuable is the opportunity for interaction with other managers and board members. Listening to others ask various questions or as they comment on different issues, reinforces the fact most associations are dealing with the same day-to-day issues. I believe that the law forum provides managers and board members a great opportunity to expand their knowledge of legal issues unique to community associations, and recommend it highly."

Julie Balestreri, Property Manager, MSI, Inc.



"There is no college course in 'How to be a Director of your Home Owners Association.' After six months in that position you begin to wonder why you got there... 'What was I thinking?' The Forum presented by the Vial Fotheringham group is really all things to all directors; HOA Director 100 100, 200, ...500+. Whether a beginning director or a well-tempered and seasoned one, there is always something greatly helpful at these forums. I have been to several, at least three, and each one is new, covering different topics each year. That's the amazing thing. Of course, there is some of the same each year, but the majority is new and current...just what you need. The workshop sessions are outstanding and actually fun. Presentations by and access to the staff and the Q&A periods will inform and ease your stress on any of the issues you may be dealing with at home. I know of no better forum that is so highly informative, accurate and inspiring. There is a wealth of information here that you will not find elsewhere. As long as I am a director I intend to go.'

Ron Senechal, HOA Director



"I have attended two of the Vial Fotheringham Law Forums and I have learned something new each time I went. I work in Accounts Receivable/Collections and the information that I have picked up at these law forums has proved very informative and useful in my position and in my own homeowners Association. I highly recommend that anyone in collections or who deals with homeowners in associations attend these forums. I think they are a very valuable resource."

*Jennifer L. Meyers, Accounts Receivable,
NW Community Management*

"With there being so much to learn with the legal part of managing associations, attending the Vial Fotheringham law forum was probably one of the best decisions I have made for my staff and I. It really helps make that part of our job a lot easier to learn. Plus we get it in a fun-filled day! Not only do my staff and I plan to continue to attend them, but our Board members are just as interested and excited, too."

Susan West, Bowen Property Management

**NW HOA Law Center &
Vial Fotheringham LLP**

**5th ANNUAL
OREGON HOMEOWNER ASSOCIATION
LAW FORUM
Saturday, October 8, 2005**

**The Holiday Inn Wilsonville
Wilsonville, Oregon
9:00 a.m. - 3:00 p.m.
(Registration and Coffee/Juice: 8:00 a.m.)**

Registration

(Please return by September 30, 2005 for pre-registration rate)

Association or Organization: _____

Contact Person: _____

Address: _____

Phone: _____

Forum Attendees:

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Registration Fee

(Includes Lunch Buffet)

\$40 pre-registration per person (9/30/2005)

\$50 at the door

The 5th Annual Oregon HOA Law Forum materials are included in the Forum fee. The Official Homeowner Association Handbook will be available for purchase at the cost of \$35.00.

Total Enclosed \$ _____

Please mail registration and fee to:

Northwest HOA Law Center

Attn: Oregon Law Forum Registration

7000 SW Varns Street

Portland, Oregon 97223 - 8006

To ensure your place at the 5th Annual Oregon HOA Law Forum, be sure to pre-register!



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HISTORY OF VIAL FOTHERINGHAM LLP

Vial Fotheringham LLP and its predecessor firm, A. R. Vial and Associates, traces its roots to founder Rich Vial's work with the Oregon Department of Real Estate beginning in 1979, where Rich reviewed condominium applications for the state. After working with a firm in downtown Portland for several years, Rich started his own law firm in 1992 and was soon joined by Rob Fotheringham, who also had a solid background in real estate, title and especially estate planning matters.

Those of us who comprise Vial Fotheringham LLP are first and foremost people. Moms, dads, husbands, wives, sons, daughters, neighbors, and friends. The relationships we share with people are our most cherished assets. We recognize the need to carry out our responsibilities in a professional and effective manner, but we hope never to lose sight of the fact that we are dealing with people and not things.

We believe that by actively participating in our neighborhoods and communities we

not only carry out our responsibilities as citizens, but are better prepared to understand and serve our clients. Our lawyers and staff are involved in many organizations, all with the support of our law firm. At each of the firm's offices, our clients are welcomed in a warm and congenial atmosphere.

So, ask us about our families, our office space, the art on the walls, or anything else you want, but expect to get some of the same questions back! Bottom line - we want to build a relationship, not just an account.



A. RICHARD VIAL
ATTORNEY AT LAW

Community Focus is a publication of Vial Fotheringham LLP and the Northwest HOA Law Center. The articles and information contained in Community Focus are for general informational purposes only and are not and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. We recommend that you consult our firm if you have specific legal questions and want assurance that our information, and your interpretation of it, is appropriate for your particular situation. Vial Fotheringham LLP and the Northwest HOA Law Center make no assurances, claims, guarantees or promises about the absolute accuracy, completeness, or adequacy of the contents of Community Focus and expressly disclaim liability for errors and omissions in the contents.