

Written Questions from Landowners and Responses from Attorney Alanah Griffith Regarding Re-organizing

1. What is the process by which the current GLA can divide into two separate boards; each with the identical covenants, bylaws and master plan, as we now have?

ALANAH'S ANSWER: First, we would need to get the two separate legal descriptions, the new names (I would guess North and South). Then someone would have to call a special meeting and vote on separating the associations into two separate associations. The notice along with the ballot would be sent out. People could vote by ballot (sending it in before the special meeting) or by attending the special meeting and voting. If the vote passes with the necessary number of votes, we would file two amended sets of covenants, which would look exactly the same except for the new names and legals. We may also have some language about the common areas in there if that is part of the vote. In other words, the process is the same as it would be for any other amendment to the covenants.

2. Do we need a simple 51% majority vote to form two new boards from the existing one?

ALANAH'S ANSWER: Yes.

3. What bylaws will we need to revise? What, if any, covenants would need to be amended?

ALANAH'S ANSWER: We would certainly have to get the separate legals, which I see are already in the covenants. Then we will have to look at everything to see what else we will need to revise, like common area language.

4. Regarding the “common areas” if the association were to separate, would separate “control” of the separate common areas mean that each area (North/South) could independently, at any time, at their discretion, choose to change the access permissions and/or designated use of the land?

ALANAH'S ANSWER: Not if you make it a section that cannot be amended without the signed permission of all of the owners of the other Association. We do this all of the time with the County requirements. They can't be amended without the permission of the County.

5. What impact would the current litigation have on the “new” Associations?

ALANAH'S ANSWER: There is no case law on this. It could be that neither of the new associations will have the liability, and only the old association will have it. Which would mean that the current cases are moot. I just do not know.

6. Will the members of the [proposed] two new boards, NG or SG, or their volunteers, be held liable for any possible future lawsuit(s), whether in part or in its entirety?

ALANAH'S ANSWER: I don't know.

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7. Would the resulting new Associations be eligible for Liability Insurance?

ALANAH'S ANSWER: Absolutely. However, the insurance companies will look at each association to determine if they want to extend coverage. The new association with any past or current litigants in it might have to make certain disclosures. If so, this could harm their chances of coverage, but maybe that would not happen.

8. What happens to the existing lawsuits if the current GLA dissolves? Has this happened to other Landowner Associations before?

ALANAH'S ANSWER: If the Association dissolves, it can still be sued for three years. Yes. The bank account stays open and litigation continues.

9. Are you aware of any Landowner Association with a "Cooperative" structure? Advantages/disadvantages? How has it worked out for them?

ALANAH'S ANSWER: Yes. Big Sky Owner's Association is the umbrella for any of the subdivisions in Big Sky, which each subdivision has its own set of covenants. BSOA oversees general use and construction matters. Each association deals with more finite issues (for example, some have rules where renters cannot have pets, or some have more restrictive building codes.) This can work, and it seems to in Big Sky. However, I am not sure that you have enough lots to justify this type of structure, but we could, for example, make each association responsible for roads...

10. Is it possible to have a (relatively) simple structure that allows for a single "umbrella" function, with all the advantages of non-duplication of effort, and, within that, still have separate autonomous functioning for the 2 areas? In such a setup, would someone from North have standing to sue someone in South?

ALANAH'S ANSWER: It would be possible, but I see that as unwieldy. Yes, if there is one set of covenants, any property owner under that set may sue.

11. In your opinion, from your experience with both this and other Associations, how would you recommend we proceed with the process of re-organizing into something different, from a legal standpoint? What are the pitfalls to be aware of?

ALANAH'S ANSWER: I can't really answer this because there are so many factors, depending on how you restructure.

12. In the interest of making it difficult for a party to file a frivolous lawsuit, in addition to using arbitration for resolving grievances, is it possible to require that the first step in the arbitration process is that both parties must put up money (perhaps \$2,000 to \$3,000 in cash) before proceedings can begin? Could we require that whoever loses in arbitration then must pay the fees for the winning party?

ALANAH'S ANSWER: Sure. However, after research, I do not believe arbitration is a

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viable option. Most of the case law states that a person has to agree to arbitration. In one case, a party agreed to arbitration by purchasing a property in a subdivision whose covenants already included arbitration. In this case anyone who did not vote for the new arbitration provision is essentially saying, no, I do not want arbitration. It is likely that a Court would rule that the person who voted no is not bound by the arbitration provision.

13. What are the normal costs of binding arbitration? What are the mechanics involved?

ALANAH'S ANSWER: Binding arbitration costs about the same as litigation, but tends to be a faster process. The reason the cost is the same is that you have to pay an arbitrator (whereas your taxes go to pay for a judge). The actual amount you pay your attorney is less because the time is less. Approximately, in a contract interpretation case, which is what most of these have been, about \$20,000 in fees and expenses.

14. What would be the outcome if the GLA simply chose not to fight the lawsuits anymore? Is there a monetary loss? What would be the other consequences?

ALANAH'S ANSWER: Since most of the cases are about injunctive relief and not money, there is not a lot of monetary loss. However, if the association did stop, then the association would lose.

15. With our growing lawsuit budget, coupled with the cost of now having to manage our own administrative duties, the funds for road maintenance and snowplowing continue to diminish. The question is, now that we no longer have any insurance, would the GLA then become liable for any accidents on roads that it may not be able to safely maintain on a consistent basis? Are we setting ourselves up for more lawsuits of a different nature?

ALANAH'S ANSWER: No, you have separate insurance for that.
[Board comment: The GLA has general liability insurance to cover common areas, roads, accidents on any community property, along with auto insurance and employment practices liability insurance.]

16. The GLA has filed a counterclaim to Lawsuit 1 seeking to have the litigants declared vexatious litigants which, if granted, would require court approval before they could file new litigation. This is still in litigation. Question: Is there any indication of when the GLA may expect the court to rule on this matter? Are there any other lawful ways to prevent or limit the litigants from further damaging the community? Can the association amend its documents to require any potential litigants to first seek remedy by mediation or binding arbitration?

ALANAH'S ANSWER: The judge cannot rule on that matter until the rest of that lawsuit is resolved. There is still one issue pending that the judge must rule on. At that time we may brief the motion and have the judge rule on it. [Board comment: see answer above regarding arbitration.]

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17. The GLA normally places liens on the property of people who are past due on their assessments. Do these liens expire in 7 years if a judgment lien or lawsuit is not forthcoming? If they expire can the GLA simply place another lien or is the past due amount considered null and void?

ALANAH'S ANSWER: There is no Montana case law on this. So far, I have been successful in arguing that the assessments run with the land and that the language in covenants prevail. You have language that the assessments run with the land. Therefore, even if you do not file a lien, there is an argument that the assessments run with the land (Section 11.01) and that they transfer with title. Therefore, you can argue that you are owed the fees. The Court may limit you to eight years of fees (statute of limitations for enforcement of contract), but you can argue that the statute was tolled (i.e. stopped) because it was a continuing violation.

18. What if the GLA corporation somehow no longer existed?

ALANAH'S ANSWER: If the GLA did not exist, then there would be no bylaws. One thing that you could do is to organize an un-incorporated association. In other words, amend your covenants so that you did not have to be an association. Then you would not come under the non-profit act and you could do away with the bylaws. Or at least some of the bylaws since you would still want meetings and such. But then, you would not have the protection granted to you under the non-profit act. Typically only corporations can get insurance to cover board member actions.

19. Is it possible to somehow dissolve the association but retain some sort of governing entity whereby an RSID could be established for road maintenance, and then a committee of landowners would dictate to the county how the money is to be spent?

ALANAH'S ANSWER: Yes.

20. Since an RSID allows the county to collect money, and if the county takes care of ALL road needs by taxing everyone adequately, why would we even need our own corporation?

ALANAH'S ANSWER: If you are not collecting assessments, then you do not need an association. You could just have a set of covenants, enforceable by the property owners, that govern use. If you spend money on anything other than roads (common areas, weeds, etc.) then you will most likely need some form of association.

21. What are the liability risks to the landowners (or a road committee made up of landowners) if there is no corporate entity?

ALANAH'S ANSWER: The risk is that you will not find insurance. Typically, if you are not a corporation, then you cannot obtain insurance for those people who are collecting assessments and making decisions on how to spend the funds.