

### **Slap suits.**

Although the term slap suit is not defined in any dictionary, the term has come to be used as a court action against those who seek to stop your project. In a land use development context the term might be used by a developer against a neighborhood group, for example, who seek to stop the development.

Although many appeals of land use developments may raise legitimate legal issues, some lack the slightest legitimacy. The risks are high, but the law does provide a remedy for those seeking to halt illegitimate lawsuits.

Washington law allows attorney's fees and other damages in very narrow circumstances for those who bring illegitimate lawsuits. For example RCW 4.84.185 allows attorney fees and costs against the opposing party for meritless claims. The window is narrow, however, and the party aggrieved must show that the entire claim is meritless.

The civil rules(CR)also provide for sanctions under CR 11 if the claims by the opposing party are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. In other words parties cannot purposely or negligently lie about the facts or fly too far from the narrow confines of the law.

In addition CR 11 provides sanctions if the lawsuit's purpose is improper, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

CR 11 sanctions and RCW 4.84 work both ways: If either side's claims are meritless, not well grounded in fact, etc., the court may impose sanctions which may include reasonable expenses and a reasonable attorney fee.

The Land Use Petition Act, part of the 1995 Legislature's regulatory reform measure, offers special rules for award of attorney fees and costs. But a party must win at every level of appeal in order to collect.

Another avenue for consideration is an action for malicious prosecution. Washington statutory law provides damages for malicious prosecution in both civil and criminal cases. RCW 4.24.350. The claimant must prove the action was instituted with knowledge that the action was false, unfounded, malicious, and without probable cause. Damages may include mental and emotional distress. Abuse of process is a similar claim under the statute. Note, however, that no action may be brought against an attorney under this section solely because of that attorney's representation of a party in a lawsuit.

One other area to review in slap suit matters concerns interference with a business expectancy. Under this tort action the claimant must prove intentional interference with a known and valid business expectancy, causing a breach and damages.

Slap suits are tricky business, the land use equivalent of Texas Hold 'em. It can be high stakes stud poker with the emphasis on bluff and winner take all. No matter who wins, the game is likely to be expensive, lengthy, and stressful. Efforts to resolve the dispute short of litigation are always worth the effort.