



Common Interest Community Associations

A View from Richmond

A conversation about

Regulation, Legislation and Recent Case Law

Speakers

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REGULATION

This You Must Know...

- All associations must have a written complaint procedure
- Associations must review complaints
- Associations must issue a decision
- If decision is adverse, complainant may “appeal” to CIC Ombudsman
- Only for violations of common interest community law, NOT governing documents or condominium instruments

What Do We Do With It?

- Make it readily available (members *and* citizens)
- Include it in Disclosure Packet/Resale Certificate
- Provide an annual certification – DPOR Registration

Contents of Complaint Procedure

- Sample form
- Process of delivery to association
- Description of specific documentation
- Request for applicable law/regulation
- Requested action or resolution

Timeframes

- 7 days – acknowledgement of receipt
- Reasonable timeframe – response to & disposition of complaint if requested info. not received
- Reasonable time – notice of date, time & location of consideration of matter
- 7 days – notice of final determination
- 14 days – provide any requested book, record to OCICO (may be extended)

Final *Adverse* Decision

- You may just get a final decision...
- Or it may be an *adverse* final decision...
- Final = all avenues for appeal exhausted
- Adverse = not what you wanted
- Final Determination (in writing) provided by association must include right to submit a Notice of Final Adverse Decision to OCICO

Notice of Final Adverse Decision

- One more bite of the apple
- Complainant must submit NFAD to OCICO in writing, on CICB forms
- Must be filed within 30 days of date of Final Determination
- Must include a copy of complaint and all other applicable documents
- Must include \$25 fee or request for waiver

Review of Final Adverse Decision

- Written acknowledgement from OCICO
- OCICO will provide copy of NFAD to association
- No review until fee received or waiver granted
- Additional information may be requested

Decision from Notice of Final Adverse Decision

- Is there a conflict with cic laws or regulations?
- Sole discretion
- Final and not subject to further review
- Not binding

There Are Repercussions

- CIC Board has authority under §54.1-2351 to:
 - File suit
 - Intervene in a suit
 - Issue a Cease and Desist Order
 - Assess monetary penalties

Excuses That Won't Fly

- We're too small
- We aren't registered with the CICB
- We're self-managed
- We don't have an attorney
- We don't get complaints
- The Ombudsman won't have anything to do now

Manager Complaint v. Association Complaint

- Manager Complaints
 - An occupation/profession regulated by CICB
 - Complaints against a manager are governed by CIC Manager Regulations

Manager Complaint v. Association Complaint

- Manager Complaints
 - Usually related to Standards & Practices and Prohibited Acts
 - Submit directly to CICB through DPOR's general complaint process

Contact Info & Resources

Office of the Common Interest Community Ombudsman

DPOR

9960 Mayland Drive, Suite 400

Richmond, VA 23233

(804) 367-2941

Email: cicombudsman@dpor.virginia.gov

Website: www.dpor.virginia.gov

Regulatory: www.townhall.virginia.gov

Complaint Form Template, Notice of Final Adverse Decision, Laws and

Regulations , everything else : www.dpor.virginia.gov/CIC-Ombudsman

LEGISLATION

Virginia Legislation

2012 SESSION OVERVIEW

- Long Session
- Convened – January 11
- Adjourned – March 10
- Reconvened (Budget) – March 10
- Reconvened (Veto) Session – April 18

Virginia Legislation

- 2876 Bills Introduced
 - 1917 House
 - 959 Senate
- 326 Bills Continued To 2013
- 1616 Bills Passed; 934 Bills Failed
- 7 Bills Vetoed By Governor

Virginia Legislation

- 33 Bills Affecting Community Associations
- 19 Failed Bills
- 2 Bills Vetoed
- 3 Bills Carried Over to 2013 Session
- 1 Bill Referred to Virginia Housing Commission
- ***Bills Became Effective July 1, 2012***

Virginia Legislation

BILLS CARRIED OVER TO 2013

- Self-Help
- Freedom of Speech – Political Signs
- Lien Priority - Property Owners' Association Act

Virginia Legislation

PASSED LEGISLATION

- Assessment Collection
- Common Interest Community Ombudsman
- Common Interest Community Board
- Declarant Rights & Obligations
- Resale Disclosure Exemption
- Books and Records – Adopted 2011

Virginia Legislation

FAILED LEGISLATION

- Foreclosure and Lien Priority
- Association Websites
- Board Member Duty of Care
- Rule Enforcement
- Books and Records
- Lender Information Requests

Virginia Legislation

VETOED LEGISLATION

- Model Declarations - Vetoed
- Solar Panels - Vetoed

Virginia Legislation

2013 SESSION PREVIEW

- Board Meeting Agendas
- Resale Disclosure
- Rule Enforcement
- Restrictive Covenants
- Signage
- Self Help
- Websites
- Assessment Collection

RECENT CASE LAW

Recent Case Law

SHADOWWOOD CONDOMINIUM

- Challenge in Fairfax County Circuit Court
- Condominium Unit Owners Association authority to assess charges for:
 1. Failure to submit certain paperwork as part of Association's Unit Owner Status Report; and
 2. Rules violations.

SHADOWWOOD CONDOMINIUM

- Fairfax County Redevelopment and Housing Authority (FCRHA) initially brought action to challenge charges assessed by the condominium.
- On Motion for Summary Judgment, Fairfax County Circuit Court ruled in favor of FCRHA.

SHADOWWOOD CONDOMINIUM

- On appeal, Virginia Supreme Court found that no reversible error and upheld the Circuit Court's decision.
- The Supreme Court based its decision primarily on a master deed provision.

SHADOWWOOD CONDOMINIUM

- Section (F) (6) of the Shadowwood Master Deed provides

no common expenses or other sums shall be assessed...other than for the maintenance, repair, replacement or improvement of the general common elements.

- Similar Bylaw provision.
- Conclusion: Association has no authority to assess charges for rule violations.



SHADOWWOOD CONDOMINIUM

- The Fly in the Ointment:
Footnote # 2 of the Supreme Court's decision.
- Supreme Court opines that § 55-79.80:2 of the Virginia Condominium Act, by its plain terms
 - is “permissive in nature;
 - does not confer authority to an association beyond that in the Association governing documents.
- The Court does not decide whether the statute could be applied retroactively to condominium instruments that predated enactment of the statute.

SHADOWWOOD CONDOMINIUM

Concerns for Associations

- Does Footnote #2 really mean what it seems to mean?
- Must recorded condominium instruments expressly provide authority for the Association to assess charges for rule violations?
- If so, resolutions adopted by the Board may not be enough to confer assessment authority.
- If no authority, associations may not assess and collect rule violation charges.

SHADOWWOOD CONDOMINIUM

More Concerns for Associations

- Fair Debt Collection Practices Act complications for Association debt collectors.
- What will the Supreme Court decide about retroactive application of the statute to pre-existing condominium instruments?

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

- Another parking space case pitting garage townhome owners against non-garage townhome owners.
- Board Adopted Parking Policy:
 - Assigned two parking spaces to each townhome without a garage.
 - No space assigned to townhomes with garages.

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

- Declaration provisions:
 - Every Owner has a right and easement of enjoyment in and to the Common Area
 - Easement granted to each Owner was subject to Association right to:
 - Establish rules governing the parking lots within the Common Area; and
 - Designate a maximum of two parking spaces for exclusive use of the Owner of each Lot.

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

- Owners of garage townhomes challenged the preferential assignment of parking spaces to townhomes without garages
- Post-challenge the Association attempted to amend the Declaration to create the new designation of Reserved Common Areas

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

- Trial Court Ruled:
 - Attempted Declaration Amendment was invalid (issues included inadequate notice; use of proxies; and, amendment effected an improper forfeiture of easement rights)
 - Parking Policy likewise invalid because policy did not assign parking spaces equally to all owners.

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

- Association appealed to Virginia Supreme Court
- *Cert* was granted
- The Court determined:
 - Purported Amendment invalid;
 - Parking Policy invalid.

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

Lessons Learned

- Inherent in the use of the terms “Common Areas” and “in common” is the concept of equality;
- Inclusive in the ability to assign up to two parking spaces is the lesser included ability to assign one and/or none;

MANCHESTER OAKS HOMEOWNERS ASSOCIATION V. BATT

More Lessons Learned

- Association should adhere strictly to amendment procedures contained in recorded governing documents.
- Associations should adhere strictly to the assignment of parking provisions, if any, contained in recorded governing documents.

Assessment Collection Issues

- Increased scrutiny of assessment collection procedures and authority.
- Attention to accuracy of accounting.

Assessment Collection Authority

Governing Document Authority must be clear:

- Late Charges and Interest
- Rule Enforcement Charges
- Administrative Charges
- Recovery of Attorneys' Fees and Costs

Assessment Collection Recommendations

- Budget for collection costs (including attorney's fees).
- Review governing documents to confirm authority.
- Consider governing document amendments to establish authority.

Questions

The Consumer Affairs Branch of the Fairfax County Department of Cable and Consumer Services and the Washington Metropolitan Chapter Community Associations Institute

2012 Common Interest Community Seminar A View from Richmond

Fairfax County Government Channel 16

Replay Dates

Saturday	November 17, 2012	1 p.m.
Wednesday	November 21, 2012	9 a.m.
Monday	November 26, 2012	5 p.m.



WASHINGTON METROPOLITAN
CHAPTER


community
ASSOCIATIONS INSTITUTE

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