FAIRFAX COUNTY

COMMUNITY ASSOCIATION

MANUAL

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The Fairfax County Department of *Cable Communications and Consumer Protection* wishes to thank the many County and State agencies, area businesses, local organizations, professionals, and all others listed below for their assistance in reviewing and improving this manual. Without everyones' help and ideas, this manual could not have reached its breadth of coverage or accuracy of information.

Dave Reidenbach, Director,
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PREFACE

This manual provides general information and guidelines concerning the legal basis and authority, administrative structure, and management procedures and practices for mandatory-membership property owners and condominium unit owners associations. Information is included about specific federal and state laws and County ordinances that affect the activities and services available to and through these *residential community* associations. This manual also contains general information and procedures on fundamental needs and issues common to many voluntary membership civic associations in our residential communities. While the manual may not address special needs or a situation particular to mandatory or voluntary membership associations, it includes many organization references and lists publications that are resources for more detailed information. This should encourage further research to help the association officers function effectively.

This manual is an operational guideline only, and is not intended to give legal, accounting, management or other professional advice. Although care has been taken to ensure that information in this manual is accurate and up-to-date, it relies upon federal, state and local laws, and resources that are subject to periodic change and amendment. All readers should be aware of such possible changes, and should verify the application of laws, regulations and other information with a responsible agency before acting or relying upon them. Professionals should be consulted when deemed necessary.

This manual is organized in four Sections.

Section I: Association Organization, discusses the governing documents and statutes that form the legal basis of a community association; its administrative organization, procedures and authorities; management types and arrangements; and many topics and issues that are common to most community associations.

Section II: Operations and Finance, discusses financial management and operations, budget preparation, taxes, legal requirements, and common expenses of property owners' associations.

Section III: Appendix and Bibliography, lists references used in this manual, other published information resources, as well as sources of technical assistance on topics common to most community associations.

Section IV: Laws and Ordinances, includes County ordinances that support, apply to, and are enforceable within all community associations.

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INTRODUCTION

During the last half-century, new concepts of planned residential communities have evolved and flourished. One of these new concepts is that of self-governing, mandatory membership owners associations in which open spaces, privately owned streets, parking, recreation and other facilities are maintained and governed by the association of homeowners. The association's authority extends onto each privately owned lot and residence with regard to its external use, appearance, maintenance and repairs. The association has authority to adopt and enforce rules and regulations that govern some aspects of everyday living and routines. It charges annual assessments on all lots to pay for maintenance of the common grounds and operation of the association; and it holds the members individually accountable for violations of its rules and covenants. Each property or lot and its residence, or condominium residential unit is viewed as an integral, contributing part of the community. In return, the association maintains and protects the community standards and its inherent residential values.

Fairfax County has nearly 1,800 property owners/homeowners and condominium unit owners' associations that vary substantially in size, type of living unit, composition of the common areas and facilities, and scope of responsibilities. The situations encountered by these community associations vary widely according to:

1) the structure and requirements of the governing documents;
2) the organizational assistance and resources provided by the developer during transition to the owners;
3) the experience of the association's board members;
4) the type and quality of management used by the association; and
5) the cooperation and involvement of association members.

In some associations, responsibilities are limited simply to the collection of the annual assessments, maintenance of financial and meeting records, and enforcement of the covenants. Other responsibilities can include the use and maintenance of open areas and spaces, repair or replacement of recreation facilities, private streets and parking lots, facilities and other amenities in the development, and contracting for services and management. Condominium associations may also provide for exterior building maintenance, master-metered utilities, common heating systems, laundry and storage facilities, and other needs of the owners.

Although this manual will focus upon the mandatory-membership homeowners and condominium associations in Fairfax County, it is prudent to briefly recognize and clarify other types of residential community associations that exist here but in significantly smaller numbers. Community owners associations are the predecessors of contemporary homeowner associations and exist mostly in the first-developed, eastern parts of Fairfax County. Their original recorded covenants regarding such issues as building types and heights, minimum setback distance, fence height and types, sheds and out-buildings, uses and prohibitions on the subdivided lots, etc. are largely duplicated by today's zoning ordinance. Typically, however, these original covenants do not address exterior use, appearance and maintenance of the privately owned lots and houses as do contemporary covenants. Most importantly, many such predecessor community associations have a declaration recorded prior to January 1, 1959 and cannot be "grandfathered" under the Virginia Property Owners Association Act. Consequently, these associations lack authority to enforce and/or resolve violations of their covenants, rules, regulations, and policies.

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Enforcement of these documents must be via litigation in court. These associations do not have the authority to charge financial assessments, therefore, they typically do no have the resources to pursue this course of legal action. However, due to the similarity of their covenants to the County-enforced zoning ordinance, some predecessor associations have amended their covenants out of existence and rely upon the County to enforce the zoning ordinance to achieve the same affect.

Cooperatives, time-shares, manufactured (mobile) home parks, and recreational clubs are other forms of land ownership or occupation regimes for members' residential and/or recreational use. These are typified by the organization's private ownership of all grounds, facilities, living units, and rights and privileges of use. Purchase of a membership in the organization entitles the member to the residential and/or recreational use specified in the documents. Each type of association or membership is governed by a different state statute that provides, among other things, for the collection of an annual membership fee or assessment for the maintenance, management, and administration of the grounds and facilities. These associations are usually required to hold an annual membership meeting to elect directors and to conduct the association's business.

While similar to residential community associations in purpose, organization and function, these land use associations don't have the same authorities and are in relatively minor numbers to homeowners' and condominium unit owners' associations, thus they don't warrant inclusion herein. However, the directors, officers and members of these or similar associations might find parts of this manual instructive and advantageous to their own operations. It is imperative, however, that the correct and applicable statute is obtained and that the requirements thereof are correctly understood and applied. Requirements of the Virginia Property Owners Association Act or the Virginia Condominium Act herein stated do not in any way apply to other types of land ownership or occupation for residential and/or recreational use.

Civic associations are voluntary membership community organizations whose purpose and agenda are more generally focused upon economic, social, cultural, political, educational, and/or development issues in the County or within the broad community. Civic associations are very beneficial in providing a discussion forum as well as a focused and unified voice of its members concerning community issues, proposals and positions, and in soliciting attention and assistance from elected officials or a governmental agency. Civic associations are neither mandated by local ordinance nor supported by state statutes, and thus have no authority with respect to the members or their geographical location, adherence to their goals and positions, or financial contributions and support from area residents. It is not uncommon for a civic association and one or more mandatory membership homeowner or condominium associations to exist in the same community with different authorities and purposes. However, civic associations are entirely voluntary in every aspect of their existence, operations and activities, and homeowners within the civic association community are individually free to participate or to not participate.

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SECTION I: ASSOCIATION ORGANIZATION
Chapter 1 - GOVERNING DOCUMENTS

This chapter discusses the laws and recorded documents that govern mandatory membership residential owners associations. These laws are: 1) the Virginia Property Owners' Association Act; 2) the Virginia Condominium Act; 3) the Virginia Nonstock Corporation Act; and 4) the Fairfax County Code, Zoning Ordinance that requires developers to establish these associations. This chapter also describes the Declaration of Covenants, Conditions and Restrictions, Master Deeds, the Articles of Incorporation, and the Bylaws, - collectively referred to as the "governing documents".

The Fairfax County Zoning and Subdivision Ordinance, (Sections 2-701 through 2-705 of Chapter 112 of the County Code) requires common open spaces to be created and preserved in planned residential communities, and that these open spaces (and any facilities thereon) must be owned, maintained and managed by a nonprofit association of the homeowners. The management and use of these "common grounds" or "common elements" are specified in the association's "governing documents." Additionally, the Declaration of Covenants, Conditions and Restrictions (CCRs) imposes architectural guidelines and use limitations on the exterior of the privately owned properties or residential units within the development. These controls provide uniform standards for the community and some protection of the property values. To this end, state laws and the governing documents jointly empower the association to adopt and enforce rules and regulations as the association deems pertinent to resolve problems and govern the everyday routines and activities within the community. This combination of laws, governing documents, and adopted policies and regulations makes each and every association a distinctly separate and unique entity.

The primary difference between a homeowner (or property owners) association and a condominium association is in the ownership of the common grounds and the common elements. In a homeowners association, the common grounds and facilities (if any) are owned in fee simple by the association; all members have a right to use and an obligation to fund the maintenance of the common grounds. In a condominium, each individual unit also owns an undivided interest or part of all common grounds, streets and parking, recreation facilities, utilities, and parts of the residential structure (i.e., the roof and lobby), which are collectively known as the "common elements." The unit owners association owns no part of the common elements. However, in both types of property ownership, the association is legally responsible to maintain, repair, replace, and manage the common grounds/elements, and has the authority to adopt and enforce rules and regulations for the members' use of the common grounds/elements. These differences are substantial enough to require separate statutes in the Code of Virginia. It is important to note that Fairfax County has no authority to enforce association covenants, bylaws, rules and regulations, or to become involved in an association's business, membership, or other internal matters. This is the purview of the association's self-governance through its internal due-process procedure, alternative dispute resolution methods, or civil action in court, which may be initiated either by the association or by the member(s).

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Association membership, rights and obligations are mandatory and automatic with the purchase of a property or residential unit subject to a declaration or master deed. This mandate for association membership "runs with the land" and automatically transfers to each new owner every time the property or unit is sold. This mandatory membership cannot be waived or voided by an owner, and is enforceable by law. This also assures each member's right to use the common facilities and grounds, and imposes upon each member an obligation to share in the common expense and responsibilities of governance. The association has the lawful authority to annually assess and collect fees for maintenance of the community and operation of the association; to enforce the covenants, conditions, and restrictions; and, if necessary, to levy monetary penalties or assessments for violations thereof.

Property Owners' (Homeowners) Associations:

In a property owners (homeowners) association, the land is subdivided into residential lots and common grounds. Each lot is privately owned, taxed, and assessed association dues whereas the common grounds and facilities are owned in the name of the association. The association is legally established and defined when the Declaration of Covenants, Conditions and Restrictions, an approved subdivision site plan, the Deed of Dedication, and (occasionally) the Bylaws are recorded in the County Land Records Office. The Deed of Dedication may contain restrictive or permissive easements, covenants or other regulations that apply to and govern the use of all lots included in the association. Prior to recordation, the County reviews these documents for their form, content, and compliance with law, including the County Code and the Virginia Property Owners Association Act.

Recordation of these approved documents legally defines and establishes the entity of the association, and the mandate for association membership. At this moment of the association's "birth," the developer/declarant is the only member and, thus, possesses full voting control of the association until the first property is sold. Thereafter, the owner membership and owner control grows with the purchase of each lot or unit. Usually, the governing documents establish different classes of membership such that the developer has 2 or 3 votes per unsold lot or unit whereas the new owners have 1 or 2 votes per lot. This assures that the developer maintains voting control of the association until sales reach about 70% - 75% of the lots and the new owners are sufficient in number and knowledge to assume control of the association and its operations. Eventually, all of the properties or units in the association, together with the voting rights, are sold and the control and operation of the association is taken over by the owners. The developer is still available on site for several months, a year, or longer as the construction is completed and reviewed by County officials prior to the release of the developer's bond.

Virginia Property Owners' Association Act - The Virginia Property Owners' Association Act, Section 55-508 et seq. of the Code of Virginia, (the "Act") enables, provides and clarifies the authority granted to a homeowner association and its board of directors, and establishes many of the association's rights and responsibilities. However, considerable diversity of opinion and interpretation continues among some associations and the legal

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profession concerning applicability of the Act to some associations. As currently written, the Act states that it applies to all developments subject to a declaration:

- initially recorded in County land records after January 1, 1959,
- incorporated or otherwise organized after such date; and,
- all such subdivisions created under the former Subdivided Land Sales Act (Virginia Code, Section 55-336).

The Act defines "development" to mean real property that is subject to a declaration that mandates membership and obligates each member to pay an annual assessment or authorizes the association to impose such assessment for maintenance of the common areas. If, however, a declaration was recorded between January 1, 1959 and July 1, 1991 and it did not provide authority for an assessment to maintain the common area(s), the association was excluded from application of the Act. In 1991, the General Assembly enacted amendments to correct this unintended exclusion, but the applicability debate continues. Long-standing associations whose declarations failed to address such annual assessment authority, or provided for assessments in amounts less than the $150 per year/per lot as required in the Code, were left in doubt as to the applicability of the Act and their authority. In 1997, the (then) Attorney General of the Commonwealth concluded a review of this matter with the following statement:

> *"Accordingly, it is my opinion that the Act applies (i) to every mandatory membership homeowners' association upon which maintenance or operational responsibilities are required or which possesses the authority to impose a regular annual assessment <u>in any amount per lot,</u> pursuant to a declaration recorded before July 1, 1991, and (ii) to every mandatory membership homeowners' association upon which maintenance or operational responsibilities are required in an amount exceeding $150 per year per lot, pursuant to a declaration recorded after July 1, 1991" (underlining added).*[1]

This opinion was intended to clarify the issues and remove the previous conflict. In 2003, the General Assembly amended the Act to remove the $150 threshold for determining whether an association is subject to the Property Owners' Association Act. Consequently, the sole criteria for defining a mandatory-membership homeowners association is a declaration recorded on or after January 1, 1959 that gives the association the authority to impose any annual assessment per lot for maintenance of the common grounds or operational responsibilities. If any uncertainty persists, a board of directors should seek legal counsel, and possibly a second opinion. This Act specifically excludes its application to real estate time-shares, condominiums, cooperatives, membership camp-grounds, or any nonstock, nonprofit, taxable corporation having non-mandatory members and, as its primary function, makes available golf, ski and other recreational facilities to both its members and the general public.

<u>Inclusions and Provisions</u> – For those associations to which the Property Owners' Association Act is clearly applicable, the Act includes, requires, or provides for the following:

[1] Letter to The Honorable Linda T. Puller, Member, House of Delegates from Richard Cullen, Attorney General, Commonwealth of Virginia; Richmond, Virginia, dated November 7, 1997.

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- associations must conduct open meetings, keep detailed books and records, and with very few exceptions, make them available to members;

- enforcement of the Declaration of Covenants, Conditions and Restrictions via due process procedure (see Chapter 3), and the levy of financial penalties (if necessary) against the property for violations;

- associations are given authority to levy special assessments when necessary or in appropriate circumstances;

- authority to create liens and other enforcement remedies is clarified;

- in a suit to enforce provisions of the declaration, the prevailing party may collect reasonable attorney fees.

Disclosure packet – Because of the special scheme of property ownership and authority found in homeowner associations, prospective purchasers need to know the various rights, responsibilities and authorities of the association and its members before they buy. They also need to know that the property is in good standing with the association in regard to its assessment account and its compliance with the covenants, conditions and restrictions of the governing documents. To accomplish this, the Property Owners Association Act requires the seller to provide an association-prepared package to the purchaser that discloses that the lot is located in a property owners' association subject to all provisions and requirements of the Act. This disclosure packet must contain:

- the name of the association, the state in which incorporated, and the name and address of its registered agent in Virginia;

- a statement of any board-approved expenditure which requires an assessment in addition to the regular assessment in the current or immediately next fiscal year;

- an account statement, including the balance of all assessments or other mandatory fees or charges pertaining to the specific lot for sale, the status of the account, and a statement as to the owner's right of use of the common areas;

- a statement identifying any other entity or facility to which the lot owner/seller may be liable for fees or other charges;

- a copy or summary of the current reserve study report, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;

- a copy or summary of the association's current budget, its income and expense statement, or statement of the association's most recent financial condition;

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- a statement or status of any pending suit or judgment to which the association is a party which could have a material impact on the association, its members, or the lot being purchased;

- a statement setting forth all insurance coverage, including any fidelity bond of the association; and additional insurance normally secured by each lot owner;

- a statement that any improvement or alteration on the lot, or uses made of the lot or common area assigned thereto are not in violation of the governing documents, rules, or regulations;

- a statement setting forth any restriction, limitation or prohibition to place a sign on the lot advertising the lot for sale;

- a statement setting forth any restriction or prohibition on the owner's right to display any flag on the lot, including reasonable restrictions on the size, place and manner of display, and on the installation of any flagpole or structure needed;

- a copy of the current declaration, the Articles of Incorporation, the bylaws, all rules and regulations, and architectural guidelines adopted by the association and enforceable upon all common grounds and privately owned lots in the association;

- a copy of any notice given to the owner/seller by the association of any current or pending rule or architectural violation;

- a copy of the fully completed one-page cover sheet developed by the Real Estate Board; and

- a certification with filing number and date of expiry that the association has filed the annual report required by 55-516.1 with the Real Estate Board.

The association may impose and collect a charge reflecting the actual cost of the preparation of the disclosure packet, but shall not exceed ten cents per page for copying costs, and the total cost may not exceed $100. The association is legally bound by its statements in the packet regarding 1) status of the assessment account and, 2) violations of architectural guidelines on the property. If the association fails to provide the packet on time, it will likely be unable to collect delinquent assessments attributable to the seller. The purchaser cannot be held accountable for actions and violations of the former owner. If the seller is financially harmed due to the association's failure to provide the packet on time, the association may also be liable for damages of up to $500. Sample forms for requesting a disclosure packet are at the end of this chapter.[2]

In 1995, section 55-516.2 was added to the Act to empower an association to negotiate with local governments for monetary awards when the association's common

[2] David S. Mercer, Esq., and Lucia Anna Trigiani, Attorney at Law; Mays and Valentine, Alexandria, VA.

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area is taken or damaged by eminent domain. This provision also stops individual members from contesting the association's (negotiation) actions in such matters.[3] The Property Owners Association Act is available from the Virginia Real Estate Board and in the reference section of the County Public Libraries. It can also be downloaded from the Internet at http://leg1.state.va.us/000/src.htm (enter 55-508 in the search window, press submit or enter, and click the same section number which is displayed as a link).

Declaration of Covenants, Conditions and Restrictions: - The Declaration of Covenants, Conditions and Restrictions (CCRs) provides the legal basis for preserving the developer's approved plan for the residential and common properties in a development, and establishes the rights and obligations of the owners and their association.
A declaration typically includes:

- a description of each parcel, lot or property subject to the association membership and its covenants conditions and restrictions;
- a description of the types of housing permitted;
- requirements for the property owners' association to be responsible for the maintenance and improvement of common property;
- a definition of membership requirements and obligations; provision for a governing body; and assigned voting rights of each type of association member;
- provision for the annual assessment of each lot to raise the funds to maintain the common areas, provide community services; and operate the association.
- requirement for prior association approval for all exterior changes or additions to any private lot or structure; and provisions for association enforcement; and,
- provision for members' access and use of the common grounds and facilities.

Any amendment(s) to the declaration must be officially ratified by a vote of the owners, and sometimes must obtain the actual signatures of the owners on the amendment document or on a ratification form. Any amendment must be consistent with the higher standing state law and current zoning requirements. Whether recorded or not, the bylaws are inferior to the declaration and do not have to be amended. However, if an amendment to the declaration creates a conflict with the bylaws, it is better practice to amend both for consistency. Any amendment to a recorded document, no matter how small or insignificant, must also be recorded in the County land records in order to supercede the former record and to become legally enforceable.

[3] Chapter 377 of the 1995 Acts of the Virginia General Assembly.

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Association Bylaws - The bylaws of a property owners' association are administrative rules, guidelines and requirements that are based upon and support the declaration and the Articles of Incorporation. The bylaws detail the authority and responsibility of the board, and may be recorded in the County Land Records but the law does not require recording. Typically, association bylaws allow for:

- requirements for the annual membership meeting, for special meetings, and the notices required prior to these meetings;
- rules for the conduct of meetings, i.e., the agenda, the order of business, quorum requirements, vote requirements for passage of different types of business items, etc;
- the number of directors, the length of their terms of office, methods of election and recall; and notice for and number of board meetings;
- the association's officers, their powers and duties, and the method and frequency of their election;
- committees that may be established to advise and assist in the management of the association;
- the method for amending the bylaws and other governing documents;
- bonding and insurance requirements;
- enforcement of the declaration, bylaws, rules and regulations;
- maintenance of association properties;
- establishment of sound financial procedures, financial reports and the budget; maintenance of the books and records, assessment levels, and collection of assessments;
- purchase of required hazard and liability insurance;
- employment of staff, and definition of their duties;
- appointment of committee members and supervision of their duties.

The bylaws often specify members' rights, including the right to vote in person or by proxy, the right to inspect the association books and records, the right to receive proper notice of meetings and assessment levels. The bylaws may also reiterate the members' responsibilities to pay both the annual and any special assessment, to follow restrictions outlined in the declaration and bylaws, and to abide by the rules and regulations established by the board of directors.

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County Zoning Regulation - Under Sections 2-701 through 2-705 of the County's Zoning Ordinance, developers are required to establish a property owners' association and to record covenants and restrictions that "run with the land" and lots. These documents obligate the association to be responsible for the operation, perpetuation and maintenance of all common lands, uses and facilities in the development, including recreation facilities, private roads, parking areas, private stormwater management facilities, etc. Private attorneys representing the developer normally prepare these documents which vary widely in content and style. They must be submitted to the Office of the County Attorney for review and approval of their form and content prior to recordation in the County's land records. The County Attorney's review includes:

- the association's Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation, and the Bylaws related to the use of common property, including the system and amounts of assessments for perpetuation and maintenance of the common property;

- a document granting the right of entry onto common property to County law enforcement, fire and rescue personnel, and permitting enforcement of emergency vehicle access for private streets and driveways;

- a complete listing of all buildings, equipment, facilities, land parcels and other holdings of the association and a complete description of each;

- a copy of the proposed notice to be given to buyers regarding the association, its assessments, and its fiscal program;

- a copy of the Deed of Conveyance and Title Certificate, or a commitment for a policy of title insurance assuring unencumbered title for all lands proposed to be conveyed to the County, other government agencies, and the association.

The developer must obtain county approval before the final site plan is approved or recorded. Once approved, these documents become part of the recorded subdivision site plan, to run with the land in full force and effect of law for not less than 20 years, and to be automatically renewed each 20 years unless terminated by the association as allowed by law. The County also requires that common open space not be "denuded, defaced or otherwise disturbed without County approval". This allows routine maintenance, mowing and edging; removal of dead, infected or hazardous trees and noxious vegetation; and replacement of dead landscaping. This ensures that privately owned, essential community facilities will be maintained when not publicly owned by the state or county. A copy of the "Common Open Space and Common Improvement Regulations" Ordinance is available online at http://www.fairfaxcounty.gov/dpz/zoningordinance.htm (click on Article 2 General Regulations, scroll down to Sections 2-309 "Open Space", and 2-700 "Common Open Space and Common Improvement Regulations"), and in all County libraries.

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Condominium Associations:

Condominium (projects) are multiple-unit structures in which each unit is privately owned, but some parts of the structure (i.e., roof, lobby, hallways, and utility systems) or the grounds (i.e., drives and parking, pool, landscaping, and street lights) are owned and shared by all of the unit owners. Condominiums may be multi-storied high-rise buildings, town houses, garden apartment style, or other structural forms; and may be limited to residential or commercial use only, or occasionally may include a mix of residential units (above) and commercial (on the ground floor) uses. The developer may increase or decrease the overall condominium size by adding or selling adjacent land; and existing apartments, commercial or other rental structures can be converted to condominium ownership. Additionally, the developer can established different types of condominiums to meet his long-range development plans prior to sale of the first unit. Some different types of condominiums are:

- **Contractible Condominium**: means a condominium from which one or more parts of the land may be withdrawn, sold or otherwise used by the developer in accordance with the declaration.

- **Conversion Condominium**: means a condominium created by changing the form of ownership of an existing building or structure (e.g., a rental apartment complex that is converted to a condominium through sale of the units to individual owner(s).

- **Expandable Condominium**: means a condominium to which adjacent land may be added for more living units, recreation facilities, open space, or other permitted development in accordance with the provisions of the declaration and applicable law.

- **Leasehold Condominium**: means a condominium in all or any portion of which each unit owner owns an estate for (limited) years in his unit, or in the land upon which that unit is situated, or both, with all such lease-hold interest(s) due to expire at the same time.

It is important for prospective purchasers, owners and association directors to understand that the developer may have retained rights with respect to some of the improvements or amenities of the condominium. Often the declarant will retain rights to add or withdraw property to or from the condominium project. Purchasers should also know what control of the association the declarant plans to retain and for how long. Similarly, purchasers should know what insurance provisions apply, about any restrictions on the sale or lease of the unit they are buying, and other important details about the ownership and governance of the condominium.

Public Offering Statement – Because of this multiplicity of development conditions and possibilities, the Condominium Act requires a Public Offering Statement to be approved by the Virginia Real Estate Board. This statement must "fully and accurately disclose the characteristics of the condominium, and the units therein offered, and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium." The declaration must also be approved and recorded by the time the first

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unit is offered for sale. Although not required disclosure documents, the approved Proffers and Conceptual/Final Development Plan are development documents that are available to the public and show all planned and proposed aspects of the condominium in detail. All of these public documents are available for review and scrutiny by any prospective purchaser. Nevertheless, whole associations can and have missed important details that affect the final development of their community. It is important that every prospective unit owner knows and understands all provisions, conditions, and rights described and defined in these documents. Then, if and when the developer exercises his right to add or sell a portion of, or otherwise modify the existing condominium, owners should not be surprised.

Virginia Condominium Laws - The Horizontal Property Act and the Virginia Condominium Act jointly govern condominiums established prior to July 1, 1974. In cases of conflict between the two Acts, the Condominium Act prevails, but it cannot invalidate any provision of the governing documents that were recorded under the Horizontal Property Act. The Condominium Act alone applies to condominium projects established after July 1, 1974. According to a former Virginia Attorney General's opinion, a condominium established under the Horizontal Property Act is governed by the condominium instruments and the first three articles of the Virginia Condominium Act that are not in conflict with the condominium instruments. The Condominium Act is available from the Virginia Real Estate Board (tel. (804) 367-8510), the County Public Libraries, and can be downloaded from the Internet at http://leg1.state.va.us/000/src.htm (enter 55-79.39 in the search window and press submit). Information about the Virginia Real Estate Board can be found on the Internet at http://www.state.va.us/dpor under Boards and Regulations.

General Requirements of Virginia's Condominium Act - It is important for anyone involved in the governance of a condominium association to understand and be familiar with the Virginia Condominium Act. This statute imposes specific limitations, restrictions, responsibilities and obligations that may not be included in the recorded documents. Among the more important provisions of the Condominium Act are the following:

- if provisions of the governing documents are in conflict, the declaration prevails first; specific provisions will prevail over general provisions; and, provisions consistent with the statute will prevail over provisions that are inconsistent with the statute;

- all board meetings shall be open to unit owners, and minutes shall be kept and be available to unit owners. Closed executive sessions of the board are permitted only in very limited circumstances;

- after the association is formed, a general meeting of all unit owners shall be held at least once per year to elect directors and conduct other association business. Notice of the meeting, including the time, date, place, and purpose must be hand delivered or mailed to each unit owner at least 21 days prior to the meeting;

[4] Letter to the Honorable J. Warren White, Jr., dated February 28, 1977, reprinted in 1996-97 Opinions of the Attorney General, pp. 40-42.

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- if proxy votes are permitted, the proxy must be signed, dated and witnessed in writing. The proxy must include a brief explanation of the effect of leaving the proxy uninstructed; all proxies automatically become invalid upon adjournment of the first meeting after the date of the proxy;

- unless the condominium instruments provide otherwise, a quorum shall be deemed present if persons entitled to cast more than 33 $^{1}/_{3}$% of the (total) votes are present at the beginning of such meeting. The bylaws may provide for a larger or smaller percentage (but not less than 25%). Unless the condominium instruments provide otherwise, a quorum of directors shall be deemed to be present if persons entitled to cast one-half of the (total) votes in the executive organ are present at the beginning of such meeting;

- accurate, detailed books and records of the receipts and expenditures relating to the operation and administration of a condominium, including specific amounts of compensation paid to its employees, must be kept and must be made available to all owners on convenient work days;[5]

- when an insurance policy has been obtained by or on behalf of the unit owners' association, written notice that the insurance has been obtained, changed or terminated must be promptly provided to each unit owner;

- an association must follow certain procedures when placing a lien on a unit for delinquent assessments. The time for filing a lien and for enforcing a lien are limited by this law;

- within 10 days of a written request, the owners' association must furnish to the purchaser of a resale unit a recordable statement of the amount of any unpaid assessments currently levied against that unit. Failure to do so will extinguish the lien for unpaid assessments on that unit; and

- the association must furnish a "Certificate of Resale" with association information concerning any rights of first refusal that the association has on a unit; the status of the unit's assessment account and any liens filed thereupon; and other financial statements concerning the association.

The required Certificate of Resale <u>must</u> include a statement that improvements or alterations to the unit or its limited common elements are not in violation of the instruments. To validate this statement, an inspection of the unit by the association is essential. The association must furnish the Certificate of Resale within 10 days of the written request and payment of a fee (may not exceed $100) by the seller. If more than sixty days elapse between a contract date of disposition and the date of settlement, the purchaser may request an association assurance (letter) that statements previously furnished in the Certificate of Resale remain materially unchanged, or a statement specifying any material changes. This assurance statement must be provided within 10

[5] *Grillo v. Montebello Condominium Unit Owners' Association*, 243 Va. 475, 416 S.E.2d 444 (1992).

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days of the request. A request form for Certificate of Resale and a sample format of the Certificate itself are provided in Chapter 2 of this manual.[6]

Condominium Instruments - "Condominium Instruments" is a collective term for the recorded documents that establish and define a condominium, and include the Declaration or "Master Deed", the Bylaws, the Deed of Dedication, and the plats and plans for the condominium. These documents are recorded among the County land records by the developer ("Declarant") prior to the sale of any unit to any person or other entity. These instruments must comply with and are subservient to the Condominium Act, the Nonstock Corporation Act, and other applicable laws. Any amendment(s) to the condominium instruments must also be recorded in the County land records in order for the amendment(s) to be effective and enforceable.

Declaration or "Master Deed" - The Declaration, or "Master Deed", is a legal description of the condominium project as a whole, including definition of the condominium units, the common elements, and assignment of any limited common elements such as parking spaces, storage areas, balconies or patios. "Master Deed" and "Declaration" are synonymous; but the former is a holdover term from the Horizontal Property Act with limited applicability since passage of the Condominium Act. The declaration establishes the type of condominium and may reserve certain rights for the developer; i.e., to provide for phased construction, allow the future sale or addition of some of the land, or permit unit use and ownership other than for residential living, etc. When a Master Deed is recorded, the units, the common elements, and the rights and liabilities of each unit; i.e., the entire condominium project, are constituted as an integral part of an established property regime even if physical construction has not started.[7] The Virginia Condominium Act applies to every condominium established by recordation after July 1, 1974, and requires the declaration to include:

- the name (including the word "condominium"), the location, the city, and county where located;
- a legal description of the condominium property by metes and bounds;
- a description of the individual unit boundaries, inclusive of the horizontal and vertical boundaries, and a description of any limited common elements;
- a description of all common elements (not within the boundaries of any convertible lands) which may subsequently be assigned as limited common elements; and the allocation of an undivided interest in common elements and limited common elements (if applicable), to each unit;
- a statement of the extent of the developer's obligation to complete improvements (labeled "NOT YET COMPLETED"); or to start/complete improvements (labeled "NOT YET BEGUN") on the recorded plans. The statement shall specify the type and

[6] David S. Mercer, Esquire, and Lucia Anna Trigiani, Attorney at Law; Mays and Valentine, Alexandria, VA, 1995.
[7] United Masonry, Inc. v. Jefferson Mews, Inc., 218 Va. 360, 237 S.E.2d 171 (1977).

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quality of materials to be used, the size or capacity of the improvements, and the time by which improvements shall be completed; and,

- other matters, rights, reservations and provisions as deemed appropriate.

If there is undeveloped "convertible land" within the condominium, or adjacent "additional land", upon which more units will be built, or if it is a "contractible, leasehold or conversion condominium," the declaration must also include the following or similar items (depending on the condition to be covered):

- a legal description of any convertible land parcels within the condominium, the maximum number of (future) units that may be created within each convertible land parcel, and a description of all other improvements that may be made on each parcel of convertible land within the condominium;

- the maximum percentage of the aggregate land and floor area of all units that may be created that are not restricted exclusively to residential use;

- the extent to which any structure erected on any convertible land will be compatible with other structures on the submitted land in terms of quality of construction, the principal materials to be used, and the architectural style;

- a statement that units created within each parcel of convertible land will be substantially identical to units on other portions of the land, or a statement describing in detail what types may be created; and,

- a description of the declarant's right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within such convertible land.

Condominium Bylaws - Condominium bylaws have the same purpose – e.g., effective governance and administration, and most of the same provisions as in a property owners' association. The Virginia Condominium Act requires the bylaws to be recorded in the County's official land records. In cases of conflict, the bylaws have higher standing than adopted rules and regulations or policy resolutions of the association. The bylaws define the number of directors and officers, their election and replacement procedures, and their duties and obligations in conducting the business of the association. The bylaws establish all meeting requirements, authority and procedures; the quorum, voting and petition requirements; the requirements for employing staff, contracting and/or delegating duties; and a host of other procedures and operational requirements. Effectively, the bylaws are the association's operational and procedural manual.

Over time, it may become desirable or necessary to amend the original or existing bylaws to address new or changed situations and conditions in the association. It is important to understand that the bylaws (and other governing documents) may not be changed or modified exclusively by the board of directors. The signatures of a "super

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majority" of unit owners representing not less than $66^2/_3$ of association votes, must ratify the amendment document(s). The law states, in part:

> *"If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify…"* (underline added for emphasis).

In other words, while the directors have the authority to adopt rules and regulations by resolution, they do not have the authority to amend the declaration or bylaws by their own (exclusive) action. The directors' authority to adopt resolutions is granted by the declaration and cannot supercede a requirement of the higher priority state law. It is important to remember that an amendment of the bylaws must be prepared, published/noticed to all members, discussed and ratified under the current (pre-change) bylaws. If approved by affirmative vote and signatures, the amendment(s) must be recorded in the land records before it becomes effective and enforceable. Directors clearly have authority to adopt and or delete rules and regulations to govern routine daily life in the association, however, these resolutions, rules and regulations belong in a separate record or file of policy resolutions or other document of the directors' actions and decisions – and not in the bylaws.

Condominium Unit Owners' Association - The Condominium Act and the governing documents require the formation of a Unit Owners' Association (sometimes "Council of Co-Owners"). Association membership is mandatory and automatic upon purchase of a unit. The Act specifically requires the declarant to write and record the initial bylaws which provide for the self-governance of the association, and for the formation of a board of directors or "Executive organ," first by developer appointees and eventually by the election of unit owners. The association does not own any of the common elements, but it can own real estate or individual units within the condominium project. Following the transition of association control from the developer, the unit owner/members should determine whether the Articles of Incorporation need to be amended to fully attend to the interests of the owners. The association may (or may not) be incorporated via application to the State Corporation Commission; incorporation is voluntary but provides limited liability protection to the association, its directors, and members that is not provided by the Condominium Act. Unless prohibited, restricted or limited by the condominium instruments, the association has the responsibility and authority to:

- elect officer(s), if so required in the bylaws;
- employ or contract (and dismiss and replace) agents and employees for condominium management services, and to exercise and discharge the powers and responsibilities of the association;
- grant or withhold approval of any action of one or more unit owners which would change the exterior appearance of any unit or any other portion of the condominium.

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The association may elect or provide an architectural control committee to grant or withhold such approval;

- provide for bonding and insurance requirements;

- acquire, hold, convey, and encumber title to real property, including individual condominium units;
- make or cause to be made, additional improvements on and as a part of the common elements of the condominium;

- have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, (i) to grant easements through the common elements and to accept easements benefiting the condominium, (ii) to assert, litigate, defend against, compromise, adjust, and settle any claims or actions related to the common elements, and (iii) to apply for any governmental approvals under state and local law.

Common Elements - In a condominium, each residential unit constitutes a separate real estate parcel that is separately assessed and taxed, and which includes an undivided ownership interest in the common grounds and facilities, which are termed "common elements." Each unit's ownership of the common elements is in proportion to its interest in the condominium as established in the declaration. The unit owners' association is required by law to maintain, repair and/or replace the common elements, which common expense is paid for by the unit owners' annual dues or assessment. The condominium act defines common elements as "... all portions of the condominium other than the (privately owned, residential) units." This is more extensive than first meets the eye. Typically, the common elements include (but are not limited to):

- the land on which the building(s) stand; gardens, yards, recreation courts and facilities, open spaces, drives, roadways, trails, service areas, entrance gate/gatehouse, and parking areas;

- foundations, main walls, roofs, hallways, entrances and exits, lobbies and stairways, and all structural portions of the building(s); the spaces between wall surfaces or between the ceiling below and the floor above; and the entire exterior surface of the building including patios and balconies;

- basements, utility rooms and master meters (if any), lodging and/or office(s) for janitors or persons in charge of the condominium, management office, mail room, gym or exercise room, swimming pool(s);

- devices or installations existing for common use such as elevators, garbage incinerators, compartments and installations of central services and utilities, all parts of water supply, sanitary drain pipes, electric utilities, and gas distribution system that serve more than one residential unit; and,

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- elements of the property (other than the privately-owned living units) that are rationally of common use or necessary to its existence, upkeep and safety.

Section 55-79.79 Upkeep of condominiums is very clear with regard to maintenance, repair and/or replacement responsibilities (and cost), yet is often misunderstood by directors and members alike. The law states:

"*Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibilities, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (1) to the unit owners' association in the case of the common elements, and (2) to the individual unit owner in the case of any unit or any part thereof, ...*"

Some condominiums also have "limited common elements" which are defined as "... a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units." An example of a limited common element is an exterior balcony or patio, the use of which appertains exclusively to the residents of the immediately adjacent residential unit. Unless expressly prohibited by the condominium instruments, the rights and obligations to a limited common element may be reassigned to another unit, if at all practical. Limited common elements are defined and designated in the declaration to specific living units, any reassignment to other unit(s) also requires written agreement of the affected unit owners, an amendment of the declaration, and payment of all associated fees and costs.

Association Meetings – The Virginia Condominium Act requires associations to conduct one general membership meeting each year for the purpose of electing directors per the association's bylaws, and for conducting other business matters of the association. This is still a board of directors meeting presided over by the president or a designated officer. For the purpose of complying with the Act, the election of directors must be an agenda item and the voting must include all members present in person or by proxy. However, unless required otherwise in the governing documents, no other association business conducted at this annual meeting requires voting by the full membership.

The Act also provides that special meetings of the full membership may be held as necessary. All unit owners of record must be notified by mail of the date, location, and purpose of the annual meeting not less than 21 days in advance of the meeting; and for special meetings, not less than 7-days in advance, by written notice to all unit owners. The bylaws may require greater advanced notice than stipulated in the Acts. Neither of the state Acts requires regularly scheduled meetings of the board of directors – normally, the bylaws require board meetings and set their frequency. However, all meetings of the association (board of directors, committees, etc.) must be open to all members who are in good standing (no delinquent assessment or violation payments). (Refer to Chapter 2 for more detailed discussion of board of directors and annual membership meetings). In 2001, both laws were amended to include the following:

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- *"The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section." and,*

- *"Notice of the time, date and place of <u>each</u> meeting of the board of directors/ executive organ shall be published where it is reasonably calculated to be available to a majority of the unit owners, and shall be sent by first-class mail or e-mail to any unit owner requesting such notice. A lot/unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at lease once a year <u>in writing</u> and include the member's/unit owner's name, address and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors conducting the meeting"* (underlines added for attention).

Along with the above amendment, each law also requires that at least one copy of the meeting agenda and materials provided to the directors also be made available for inspection by the membership (the amendment is silent with regard to copying the meeting material). Further, the laws provide that "Any member may make an audio recording of any portion of a meeting required to be open" (this excludes executive sessions). The amendments also provide that if a meeting is conducted by telephone/ video conference or other electronic means, at least two members of the board must be physically present at the meeting place included in the (public meeting) notice. The audio/electronic equipment used at such meeting shall be sufficient for any public member in attendance to hear (by remote) what is said by all directors attending the meeting, electronically or by physical presence. Lastly, voting by secret ballot in an open meeting (except for the election of board officers) shall be a violation of the laws.

These amendments effectively force publication of all meeting schedules and thereby make all association meetings more accessible to the membership. The intent of the General Assembly is to mandate the openness of all meetings and prevent the evasive tactics used in the past by some boards. Although members' comments and concerns can be intrusive and even disruptive of meetings, the directors must remember that their elected position does not supercede, minimize or negate the validity of the members concerns. Experience has shown that associations having the fewest internal conflicts are those that routinely publish their meeting schedules, promote attendance, and openly seek membership input and opinion; they strive to avoid even the appearance of clandestine and evasive decisions or meetings.

<u>Incorporation</u>

Incorporation is a very common business practice that assures a property owners' association of the powers, duties, privileges and obligations of a nonstock corporation. Most importantly, incorporation provides liability protection to the directors and individual members against claims and court judgments against the association. No law mandates incorporation,

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however, a property owners' or condominium association declaration might require incorporation. Such choice is entirely voluntary, first by the developer, and then by the owner/directors after transition of the association control. In Virginia, non-profit property owners' and condominium associations are incorporated under provisions of the Virginia Nonstock Corporation Act (Title 13.1, Chapter 10, Section 13.1-801 et. seq. of the Code of Virginia, Ann.) which is regulated and enforced by the State Corporation Commission (SCC) (tel. 1-804-371-9733).

The Articles of Incorporation generally include the following information, requirements and powers:

- the name of the corporation and a statement of purpose for which the corporation is organized;
- the authority to make contracts, borrow money, and incur liabilities;
- the powers of the association, including the right to have and exercise all powers, rights, and privileges which a nonstock corporation may exercise, to make/alter the bylaws for the administration and regulation of the corporation, and to exercise all powers necessary or convenient to affect any of the purposes for which the corporation is organized;
- the manner in which the directors of the corporation are elected or appointed; to elect or appoint officers and agents and to define their duties; to designate ex-officio directors; and list the phone number, names and addresses of the initial board of directors;
- a description of the votes needed to amend the Articles of Incorporation and the method and vote necessary to dissolve the corporation;
- provision(s) designating the class of members, stating the qualifications and rights of the members of each class, and conferring, limiting, or denying the right to vote, or providing that such membership provisions will be set forth in the corporation's bylaws;
- the address of the corporation's registered office and the name and business address of the registered agent.

Virginia's Nonstock Corporation Act gives a corporation considerable discretion to establish the details of its administrative structure and the business procedures it will use. The Act permits association bylaws to provide for the regulation and management of the association, which are not inconsistent with the statute or the Articles of Incorporation. While many provisions of the Virginia Nonstock Corporation Act deal with requirements for establishing a corporation and formulating its Articles of Incorporation, the statute should be carefully compared with an association's declaration and bylaws to determine where the association's documents are silent and, therefore, provisions of the statute apply. Whenever a change in the Articles of Incorporation is contemplated, the statute should be reviewed to make certain the change is permissible. Any amendments to the Articles of Incorporation must be filed with the

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SCC. This allows each association to adopt the most effective system for its circumstances while still protecting the interests and rights of corporation members, allowing that:

- one individual may hold two or more offices;
- more than 2/3 of the votes cast at a meeting (at which a quorum exists) are necessary to amend the Articles of Incorporation. Notice of a meeting to act on a proposed amendment must be given to each member entitled to vote not less than 25 days nor more than 60 days before the meeting; and
- a minimum notice of ten days and maximum notice of 60 days for regular and special membership meetings.

If the Articles of Incorporation and bylaws do not specify otherwise, the statute will determine the number of members necessary to conduct business at a membership meeting as 1/10 of the entitled votes represented in person or by proxy. Unless specified otherwise, the statute also determines the term of a member of the board of directors as 1 year; the number of the board of directors necessary to form a quorum; procedures to fill a vacancy, or remove a member of the board of directors. The statute also requires a corporation to:

- keep certain specified corporate records;
- keep the minutes of the members meetings, the board of directors meetings, and committees which have been delegated authority by the board of directors;
- maintain appropriate accounting records, and provide access to specified corporate records to any member or his/her agent or attorney for inspection and copying, for any proper purpose, at any reasonable time, after at least five (5) business days' written notice;
- list the names and addresses of its members who are entitled to vote, and make it available during usual business hours for ten days prior to each meeting; and
- submit an annual report and registration fee to the State Corporation Commission (SCC) in Richmond, VA between January 1 and April 1 each year giving the name and other pertinent information of the nonstock corporation. Failure to file an annual report or pay the annual registration fee before September 1 of each year subjects a corporation to automatic termination. A corporation may be reinstated by making such application and submitting all past due fees and a current annual report to the SCC within five years of the termination.

An association's registered agent is the official public contact for the corporation and ensures that official correspondence will reach the association and be properly served. The agent must be a citizen of Virginia and an officer or director of the corporation, a member of the Virginia State Bar, a professional corporation of licensed attorneys, or a professional limited liability company. The address of the corporation office must also be the business address of the registered agent. Many associations employ an attorney for a yearly fee to be its registered agent

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and use his/her business address as the registered corporation office. If an association retains an attorney on a regular basis, he/she often functions as its registered agent. A copy of the Nonstock Corporation Act and a guide for preparation of Articles of Incorporation are available from the Clerk of the Commission, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209-1197. The Nonstock Corporation Act is available in the reference section at most County Public Libraries, and online at:
http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC (select Title 13.1, then Chapter 10).

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Request for Property Owner's Association Disclosure Packet

_____ Property Owner's Association

(Address)

Lot Owner: _____ **Date of Request** _____
Lot Address: _____
Home Phone: _____ **Office Phone:** _____
Mailing Address: _____
Delivery Address: _____
(if different)

_____

In order to facilitate the sale of my lot and pursuant to the provisions of the Virginia Property Owners' Association Act ("Act"), I hereby request that the Association provide the Association Disclosure Packet for the lot identified above.

I understand that the Association Disclosure Packet must be provided to me within fourteen days of receipt of this request, and that payment in full for the preparation of the Association Disclosure Packet must accompany this request. Enclosed is a check payable to the association in the amount of $_____ [not to exceed $100.00, reflecting the actual cost of preparing the Association Disclosure Packet].

I hereby certify that any improvements or alterations made to the lot are not in violation of the Association documents including the Declaration of covenants, Conditions and Restrictions, the Bylaws, and the architectural guidelines of the association.

I hereby designate _____ as my authorized agent to receive this Association Disclosure Packet on my behalf pursuant to Section 55-512A of the Act.

_____

Owner

Note: Payment in full must accompany this request and be mailed to the association address shown above.

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VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT

§ 55-518. Exemptions. – A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers from one or more co-owners solely to one or more other co-owners.

5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling.

B. Notwithstanding the provisions of subdivision 9 of this section, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. The disclosure required by this subsection shall be made by a builder (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § 55-519. The builder may not satisfy the requirements of this subsection by the use of the disclaimer statement described in § 55-519. If no defects are known by the builder to exist, no written disclosure is required by this subsection. (1992, c. 717; 1993, c. 824; 1994, cc. 80, 242.)

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_____

Property Owners' Association

Association Disclosure Packet

[Virginia only]

To: _____

From: _____
Property Owners Association

Re: Lot Address _____

Date: _____

Pursuant to Section 55-512 of the Virginia Property Owners Association Act, as amended, we hereby certify that as of the date hereof, except as herein stated:

A. The status of assessments and mandatory fees or charges with respect to the lot is as follows:

Current assessment due	_____	$_____
Assessments in arrears	_____	$_____
Other fees or charges due	_____	$_____
Fees or charges in arrears	_____	$_____
	Total Due	$_____
Assessments, fees and charges for the current fiscal year not yet due		$_____

The association levies annual assessments, payable in equal monthly installments, to pay common expenses. Special assessments may also be levied for the same purpose. Charges for use of certain common area facilities include _____. A fee of $_____ is currently charged by the association for the preparation of the Association Disclosure Packet. A late charge of $_____ is currently applied to any assessment or installment thereof not paid within _____ days after the date it becomes due. There are no other fees or charges imposed by the association except the following:

[Fill in if applicable]

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B. The association is (is not) a nonstock corporation organized under the Virginia Nonstock Corporation Act. The name and address of the registered agent for the association is:

[Fill in name and address of the registered agent]

C. The following, if any, is a list of all capital expenditures anticipated by the Association within the current or succeeding two fiscal years:

[Fill in if applicable]

D. As of the date of this certificate, there is an outstanding balance in the reserve for replacement fund (reserve account) of approximately $_____. Of this balance, the following amounts, if any, have been designated by the Board of Directors for the following specific projects:

[Fill in if applicable]

E. Attached to this certificate is a copy of the statement of financial condition of the income and expense statement, (if any), and the current operating budget of the association for the year ended _____, 20___, the most recent fiscal year for which such statement is available.

F. There are no unsatisfied judgments against the association, nor any pending suits in which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased, except as follows:

[Fill in status and nature if applicable]

G. The association holds hazard, property damage, and liability insurance policies covering the common area. [The association also maintains a fidelity bond in the amount of $_____.]

H. The association has not given notice to the owner of the lot and has no knowledge of whether improvements or alterations made to the lot or uses made of the lot or the common area assigned to the lot, if any, are in violation of the association documents, except as follows:

[Fill in if applicable]

I. There are [are not] restrictions, limitations or prohibitions on the right of a lot owner to place a sign on the owner's lot advertising it for sale. Such restrictions (if any) are set forth in Section _____ of the Declaration [Bylaws, Rules and Regulations, Resolutions, and/or Architectural Guidelines] attached hereto as Exhibit _____ to this Disclosure Packet.

J. Attached to this certificate is a copy of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, and Architectural Guidelines of the association, including all amendments.

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The information contained in this Association Disclosure Packet, issued pursuant to section 55-512 of the Virginia Property Owners' Association Act, as amended, based on the best knowledge and belief of the association, is current as of the date hereof.

The Association contact for questions regarding this disclosure packet is:

_____
(Name)
_____
(Address)
_____,_____
(City) (State) (Zip)

I hereby acknowledge that I received this Association Disclosure Packet on _____, 20___.

_____
(Unit Owner)

_____
(Unit Owner)

I hereby acknowledge that I have received and read the information contained in this Association Disclosure Packet on _____, 20___.

_____
(Purchaser)

_____
(Purchaser)

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Request for Certificate of Resale

_____ Condominium
Unit Owners Association

(Address)

Unit Owner: _____ Date of Request _____
Lot Address: _____Unit # _____
Home Phone: _____ Office Phone: _____
Mailing Address: _____
Delivery Address: _____
(if different)

_____

In order to facilitate the sale of my unit and pursuant to the provisions of the Virginia Condominium Act ("Act"), I hereby request that the Unit Owners Association provide the Certificate of Resale for the unit identified above.

I understand that the Certificate of Resale must be provided to me within ten days of receipt of this request, and that payment in full for the preparation of the Certificate of Resale must accompany this request. Enclosed is a check payable to the association in the amount of $_____ [not to exceed $100.00, reflecting the actual cost of preparing the Certificate of Resale].

I hereby certify that any improvements or alterations made to the unit are not in violation of the Condominium instruments including the Declaration, Bylaws, and Resolutions adopted by the Board of Directors of the _____ Condominium Unit Owners Association.

I hereby designate _____ as my authorized agent to receive this Certificate of Resale on my behalf pursuant to Section 55-79.97 of the Act.

_____
Unit Owner/s

Note: Payment in full must accompany this request and be mailed to the association address shown above.

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_____ **Condominium**

Certificate For Resale

[Virginia only]

To: _____

From: _____ Condominium
(Unit Owners Association)

Re: Condominium Unit No. _____, and limited common element parking space #_____

Pursuant to Section 55-79.97 of the Virginia Condominium Act, as amended, we hereby certify that as of the date hereof, except as herein stated:

A The status of assessments with respect to the identified unit is as follows:

Current assessment due	_____	$_____
Assessments in arrears	_____	$_____
Other fees or charges due	_____	$_____
Fees or charges in arrears	_____	$_____
	Total Due	$_____
Assessments, fees and charges for the current fiscal year not yet due		$_____

The association levies annual assessments, payable in equal monthly installments, to pay common expenses. Special assessments may also be levied for the same purpose. A fee of up to $_____ is currently charged by the association for the preparation of a Certificate of Resale (such as this one). A late charge of $_____ is currently applied to any assessment or installment thereof not paid within _____ days after the date it becomes due. There are no other fees or charges imposed by the association except the following:

[Fill in if applicable]

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B. The condominium instruments do not create any rights of first refusal or other restraints on free alienability of any of the condominium units.

The condominium instruments create a right of first refusal for the benefit of the association on the sale of any of the condominium units. The right has been waived in the case of the sale of this unit from _____ to _____, provided that such sale takes place in accordance with the terms of the contract of sale between them dated _____, 20__, and that no modification of the contract occurs without the consent of the association.

C. The following, if any, is a list of all capital expenditures anticipated by the Unit Owners Association within the current or succeeding two fiscal years:

[Fill in if applicable]

D. As of the date of this certificate, there is an outstanding balance in the reserve for replacement fund (reserve account) of approximately $_____. Of this balance, the following amounts, if any, have been designated by the Board of Directors for the following specific projects:

[Fill in if applicable]

E. Attached to this certificate is a copy of the statement of financial condition (balance sheet), an income and expense statement, (if any), and the current operating budget of the Unit Owners Association for the year ended _____, 20___, the most recent fiscal year for which such statement is available.

F. There are no unsatisfied judgments against the Unit Owners Association, nor any pending suits in which the Unit Owners Association is a party except as follows:

[Fill in status and nature if applicable]

G. The Unit Owners Association holds hazard, property damage, and liability insurance policies covering the common elements and the units as required by the Bylaws. It is suggested that each unit owner obtain insurance covering property damage to betterments and improvements installed in the unit and personal property contained therein (not covered by the Unit Owners Association policy) as well as insurance covering personal liability. You are urged to consult with your insurance agent.

H. The Unit Owners Association has no knowledge of whether improvements or alterations made to the condominium unit or the limited common elements assigned thereto are in violation of the condominium instruments except as follows:

[Fill in if applicable]

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I. There is no leasehold estate affecting the condominium.

J. Attached to this certificate is a copy of the Declaration, Bylaws, and Rules and Regulations of the condominium, including all amendments.

K. The condominium [a portion of the condominium] is [is not] located within a development subject to the Virginia Property Owners' Association Act (§55-508 et seq. of Chapter 26 of Title 55 of the Code of Virginia).

The information contained in this Certificate for Resale, issued pursuant to section 55-79.97, 55-79.84(H), and 55-79.85 of the Condominium Act, as amended, based on the best knowledge and belief of the Unit Owners Association, is current as of the date hereof.

The name and address of the President of the Unit Owners Association is:

_____
(Name)
_____
(Address) (Unit)
_____,_____
(City) (State) (Zip)

The Unit Owners Association may charge a fee for the actual cost of preparation of this Certificate for Resale as allowed by law.

Dated: _____

_____ Condominium
Unit Owners Association

By _____,_____
(Name) (Office)

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I hereby acknowledge that I received this Certificate For Resale on _____, 20___.

_____
(Unit Owner)

_____
(Unit Owner)

I hereby acknowledge that I have received and read the information contained in this Certificate For Resale on _____, 20___.

_____
(Purchaser)

_____
(Purchaser)

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Chapter 2 - ADMINISTRATIVE PROCEDURES

Many persons who become active in property owners' and condominium unit owners' associations have had some experience in business or civic organizations and are familiar with the general functions of officers, boards of directors, and committees as well as the operational procedures for meetings, elections, etc. This chapter discusses the administration of a condo or homeowners association and how this structure works to transfer authority and control, formulate effective policy and efficient operation, and promote reasonable enforcement of the rules, regulations and covenants.

Transition from Developer to Owners:

A condominium or homeowner association is created when the Declaration and other required documents are recorded in the County's Land Records Office. At this "moment of birth" the developer owns 100% of the (proposed) development and all votes allocated to the properties/units by the declaration. The developer is the entire association; he/she/they appoint the initial directors from business associates, conduct association meetings, and keep records of decisions and financial matters of the association separate from his/her/their business concerns. This total control of the association is gradually relinquished as residential units or properties (and their allocated votes) are sold to private owners. During this time, the developer usually appoints new owners to replace the initial directors on the Board but remains a voting member of the association until the last property or unit is sold. Typically, the developer has reserved certain rights (defined in the Declaration) to protect current and future business interests and responsibilities during completion of the development, even after the final sale of properties/units (and their votes) has been concluded.

A property owners' first involvement in the administration of the association usually takes place in the transition period when voting control of the association transfers to the (majority) owners who elect their own directors. This usually begins at a time set forth in the association's documents and correlates to a percentage of sales of the planned lots/units, or at a predetermined date when the developer anticipates substantial completion of the development, whichever comes first. For condominiums, the transition period must take place no later than when three-fourths of the ownership interest in the common elements have been sold, or at a specific time after the first unit is sold, whichever comes first. The maximum length of the latter period can vary from two to five years and depends upon whether the condominium is a contractible, expandable or a phased condominium. Regardless of the type of residential development, the transition period can be significantly affected by the regional economy, the rate of home sales, and by the financial health of the developer.

During the transition period, new owners become familiar with the operation and administration of the association for which they will shortly be responsible. This familiarization process may be planned and directed by the developer who prepares and distributes orientation materials, newsletters and other communications, and by holding meetings with the owners to discuss the operations, actions and objectives of the association. The association documents may

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allow or require the developer to appoint an advisory board of directors and/or committees to work with him, or permit a board of owner-directors to be elected with the developer having veto rights over some or all board decisions. New owners must realize that a developer has budget responsibilities and a construction schedule that could be adversely affected by the owners' decisions.

Some developers take few or no steps to prepare the new owners for control of the association; some may even neglect or ignore the association altogether. This occurs more often where there are few common areas or tangible facilities and the association is not visible in the day-to-day routine of the community. In this event, owner involvement usually begins with com-plaints about unfinished construction, unacceptable conditions, cost responsibilities, safety hazards, or concern that the developer's bond will be released prior to correction. It is important for an association to maintain a list of defects, deficiencies and unacceptable conditions to give to the County inspector to enforce correction prior to the bond release. This causes communication among the new owners who take the initiative to prepare for their upcoming responsibilities by formulating a list of questions and concerns about the association's role and authority and requests an owners' meeting with the developer and county officials. Often such meeting or communication with the developer results in the owners activating the association or sharing in its operation with the developer. It is incumbent upon the owners to maintain their involvement in the association to become knowledgeable about its operations. If the developer does not involve owners in operating the association, they can learn by reading the association documents and reviewing the books and records (an owner's right under the Property Owners' Association Act, the Nonstock Corporation Act, and the Condominium Act), by talking with the developer's personnel, and by bringing attention to violations of the architectural controls or other covenants and requesting that they be corrected and enforced.

It is advisable for owners involved in the transition process to contact an attorney who is knowledgeable with community association law to provide advice and assistance, especially where the association has not been fully operational or where the developer is not responsive to the owners. An attorney can examine the Articles of Incorporation (filed by the developer) to determine their viability; examine the Covenants, Conditions and Restrictions (CC&Rs) and advise owners of their rights and responsibilities. An attorney can determine whether any more documents or amendments to existing documents need to be drafted, and can take steps to assure that the association's tax liability is minimized. During transition, owners usually need information and professional assistance to assist in the initial operation of the association. Prior to transfer of the association, a developer should provide the following:

- copies of the association's documents, including any recorded amendments;
- minutes of board meetings, annual meetings, and association correspondence;
- an inventory of all association property, facilities and assets, including plats, plans, engineering drawings of the development, and "as built" plans detailing the actual construction;

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- the association's financial books and records including a recent audit report, a list of delinquent assessments (including the developer), status of reserves, and tax returns;

- association insurance policies, and current contracts;

- construction warranties, and the names of contractors who constructed the development, including common areas and facilities;

- copies of maintenance schedules and a list of repairs that have been performed;

- a list of owners in the development.

If the developer fails to provide the above materials, documents and records, they may be available from:

- Declaration, Covenants, & Bylaws
  Record Room, Fairfax County Court House,
  4110 Chain Bridge Rd., Fairfax, Va. 22030; tel. (703) 691-7320, press 3,4; or at www.fairfaxcounty.gov/courts.

- Articles of Incorporation:
  State Corporation Commission (SCC), Box 1197, Richmond, Va. 23218-1197; (804) 371-9733, press 1; or www.state.va.us/scc/division/clk/diracc.htm.

- Development Plans:
  Plan & Document Control, Department of Public Works & Environmental Services (DPWES), 12055 Government Center Parkway, Fairfax, Va. 22035; tel. (703) 324-1548 or (703) 324-1730; or www.co.fairfaxcounty.gov/dpwes/homepage.htm.

- Unit Owners in the Association:
  Fairfax County Department of Tax Administration, 12000 Government Center Parkway, Suite 357, Fairfax, Va. 22035; tel. (703) 222-8234; or www.fairfaxcounty.gov/dta/re/default.asp.

Developer's Bond and County Inspections – Developers are required to post a bond with the County (DPWES) to assure the completion of the public improvements. Bonded facilities normally include (but are not limited to) streets, sidewalks, curbs and gutters, storm drainage, storm water management ponds, sanitary sewers, utilities, and lighting. Common grounds and common elements such as parking lots, swimming pool and/or clubhouse, play courts and fields, tot lots, trails, etc. are also covered by the developer's bond. All bonded items are constructed per approved plans and County standards. The bond does not cover the residential properties, private homes, and driveways within the development. All habitable structures and related facilities are built to standards in the Virginia Uniform Statewide Building Code (VUSBC) and usually have warranties provided by the homebuilder and/or material and product manufacturers and suppliers.

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The developer is responsible for mowing, landscape maintenance, snow removal on all roads, and all bonded facilities and common grounds until approved by the County and legally transferred to the association or to another party, i.e., VDOT (for public roads), or DPWES (for stormwater maintenance). No association funds should be expended for such maintenance, even if all lots have been sold and the owners have voting control of the association. All cost and responsibility belongs to the developer until official transfer to the association.

Construction problems should be reported as soon as discovered to determine whether a code violation exists. Under the Virginia Statute of Limitations, reporting a Code violation(s) to the local building official must occur in the first year of occupancy to place repair responsibility on the contractor or builder. Early reporting by property owners allows time for investigation, helps to preserve effective code enforcement, and may avoid placing the burden and cost of repairs on the owner. DPWES is responsible for inspections, approvals, and enforcement of the VUSBC through the first year. Concerns regarding bonded public facilities should be reported to the Environment and Facilities Inspection Division at (703) 324-1950 for investigation. The status of a developer's bond for public improvements is available from the Bonds and Agreements Branch at (703) 324-1590. Contact the Code Enforcement Branch at www.fairfaxcounty.gov/dpwes or at (703) 324-1937 to inquire or file a complaint about the following:

- structural or systems deficiencies (electrical; plumbing; heating, ventilating and air conditioning); or any structural or system work being performed without necessary and required permits;

- home improvement repairs or work (e.g., roofing, driveways, decks, hot tubs, etc.) being performed by unlicensed contractors;

- conditions such as standing water, inadequate drainage, lack of soil stabilization and/or erosion control should be reported to determine if corrections can be made under the bond or a conservation escrow.

Transition from Developer Control, GAP Report 3, Community Associations Institute, (Second Edition), 1996 includes a more detailed discussion of the transition process and suggests specific activities that the owners might be involved in during the transition.

Board of Directors:

State laws require condominium and homeowner associations to be governed by an "executive organ," more often called the Board of Directors (or Trustees), the seat of authority in associations. The board manages and conducts the business of the association; it maintains and repairs the common property; enforces the covenants, conditions and restrictions as well as the adopted rules and regulations; and protects community standards and property values. In most associations, the number of directors is stipulated in the bylaws, but generally is large enough to

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avoid being overburdened with work, but small enough to be efficient. Directors or Trustees are elected by the membership, usually for terms of one to three years, and often staggered to provide a continuing level of experience and continuity on the board while accommodating "new blood" in its makeup and decision making.

Hierarchy of Documents (Order of Precedence) – The board can delegate duties to the property manager, committees, and/or staff employees, however, the final responsibility and authority for decisions and for fulfilling its obligations remains with the board. Directors must be aware of the laws and legal requirements applicable to their association and apply due consideration in all decisions and actions of the board. The board's responsibilities and scope of authority are set out in the following hierarchy of documents or order of precedence:

- Federal laws (Civil Rights, Americans with Disabilities, Federal Fair Housing Acts), regulations, and applicability of federal court decisions;
- State laws (Virginia Condominium Act, Property Owners Act, Nonstock Corporation Act), regulations, and court decisions;
- County/local ordinances, regulations, and court decisions;
- Declaration, Master Deed, and Covenants, Conditions and Restrictions (CCRs);
- Articles of Incorporation;
- Bylaws;
- Rules and Regulations; board resolutions.

Generally, board actions and decisions must yield to or comply with requirements or restrictions in documents of higher priority, precedence or legal standing. Federal laws at the top of the hierarchy are the most rigid and inflexible of documents and leave little or no discretionary choice. On the other hand, the adopted rules and regulations of the board's making have the least legal standing and, therefore, are the best opportunity for flexibility and discretion. Between these extremes, the other documents provide more or less opportunity for discretion by the board. The board cannot adopt rules and regulations, or pass decisions that conflict with or violate provisions and requirements in the bylaws, the declaration, or a higher level of authority. Board decisions and resolutions cannot be in conflict on issues when the higher levels of authority are silent.

Directors must also understand and comply with the obligation of "shall" and "may" in any document. "Shall" means it is mandatory and that there is no permissible choice, whereas "may" means something may or may not be done – it is not mandatory but rather an opportunity for choice, using good business judgment, application of reasonableness, and understanding of the situation. Hopefully, all conflicts in the

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governing documents were eliminated by initial review, but in case of any conflict, the order of precedence will control and decide the issue. For example, if the bylaws say that the board "shall" do (whatever) that conflicts with the recorded declaration or state law, the precedence or hierarchy of the restrictive document will prevail over the bylaws.

Duty of Loyalty and The Business Judgment Rule – Board members are charged with a duty of loyalty and fiduciary responsibility to use good business judgment in conducting the governance of the association. Directors must make sure that their decisions work to the benefit and protection of property values in general and without consideration of personal interest or gain.[8] Members of the Board are protected by the business judgment rule. "So long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board's."[9] It is not illegal to err or even cause financial loss or other harm provided that the board can demonstrate reasonable investigation, consideration, thoroughness, and good business judgment in reaching its decisions. "A complainant must establish that a board acted negligently, willfully in bad faith, outside of its authority, or for discriminatory purposes. The mere fact that a decision turned out to be unwise or incorrect does not make Board members liable for any resulting harm or loss."[10] Board members must be very familiar with the documents of their association, stay informed about association issues, regularly attend meetings, and request that their perspective, opinion and/or decision be recorded in the meeting minutes if and when they disagree with a board's action.

It is helpful to hold an orientation session for newly elected board members and/or provide each director with specific information about the association. A "Welcome Aboard" manual might include copies of association documents; i.e., bylaws, rules and regulations, budget materials, and minutes of the last three or four board meetings. This might be followed by an orientation session to inform new directors about association practices and procedures, reviewing current contracts, budgets, committee reports, etc.

Association Officers:

Each association's bylaws specify that the board of directors must elect officers from among its members at the first meeting following their general election by the membership. This is the only occasion in either homeowner or condominium associations for which written ballots or secret voting may be used. The bylaws usually describe the duties of each officer, but often a board defines its officers' and individual board member's responsibilities to meet specific needs.

- President – The president is the chief executive officer, or principal officer, of an association and is responsible for seeing that association business is properly and promptly

[8] "Avoiding the Three-Ring Circus: A Primer for Serving on your Board," by John J. Brennan, III, Esq. and Vernon W. Johnson, III, Esq., Directors at Jackson & Campbell, P.C., Washington D.C. & Rockville, MD.
[9] Levandusky v. One Fifth Ave. Corp., 75 N.Y.2d 530, 554 N.Y.S.2d 807, 553 N,E.2d 1317 (1990)
[10] Ibid.

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transacted. The president presides over meetings of the board and general membership meetings, signs all official documents including Memoranda of Lien (see Chapter 7), and often co-signs checks. The bylaws of an association may specify whether the president votes on each issue, votes only in the case of a tie, or votes at his/her discretion. The president should be a leader, have the ability to delegate authority, be firm but impartial, have a working knowledge of parliamentary procedure, and good common sense. It is important that he/she keeps an open line of communication to residents and is aware of their problems and concerns. The president is perceived as the official representative of the association and must clarify when he/she is speaking for the association and when he/she is speaking as an individual member.

- Vice President – The vice president usually acts in the president's place whenever the president is absent, disabled, etc. and may also preside over meetings if the president wishes to temporarily relinquish his position. A vice president is often assigned special responsibilities by the president or board; serving as the board's liaison with committees or acting as liaison with local government agencies.

- Secretary – The secretary is usually responsible for keeping accurate minutes of board and general membership meetings and maintaining all official association documents, membership rosters, correspondence, copies of bids and contracts, etc. The secretary may also keep the corporate seal and control of its use. The secretary may prepare and send notices of meetings, prepare the meeting agenda, and obtain information or materials for association business.

- Treasurer – Some associations require the treasurer to be responsible for some or all the association's financial affairs. The treasurer may prepare the annual budget, maintain the association's accounting system, collect and disburse funds, prepare financial statements, collect past-due assessments, make arrangements for an annual audit, and/or prepare and file tax returns. The treasurer should have professional qualifications in financial matters. Many associations prefer to retain a CPA, or include financial services in the contracted responsibilities of a professional association management company.

Board Meetings:

The purpose of board meetings is to conduct the business of the association. This ranges widely from contracting, making purchases or personnel decisions, forming community action plans, discussing problems such as covenant and rules violations, vandalism or unexpected replacement work, formulating a budget, and resolving a multitude of other matters. The bylaws usually specify the frequency or minimum number of board meetings to be held annually, and the quorum or director attendance necessary to officially conduct business. Most association boards meet monthly at a regular time and place to make it easier for association members to attend.

A meeting package including an agenda, draft minutes of the previous board meeting, committee reports, financial reports, or other information is normally distributed so that board members are better prepared to act on business items during the meeting. A meeting package

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should be as informative as possible, including the agenda of actions and topics to be considered, the person(s) responsible for presentations (if any), action to be taken on an issue (information, consideration, or decision), and supporting and/or background documentation when necessary. A typical board meeting agenda may read as follows:

1. Call to order
2. Approval of minutes
3. Treasurer's report, and acceptance
4. Report of standing committees
5. Report of special committees
6. Report of the management agent
7. Old business
8. New business
9. Member participation
10. Adjournment

It is important for each director to remember that the association is not exclusively his or hers. While the directors have the authority and responsibility to conduct the business and make the important decisions, all members of the association have the right to attend meetings and to know what is happening and proposed in their community. The state laws governing homeowner and condominium associations require that all board of directors meetings, workshops, committee meetings, and any other official assemblage of the association must be open to any member of the association. Some boards hold preliminary "working" sessions prior to the actual board meeting, particularly when there is substantial business to transact or when the issues to be addressed are complex or controversial. This gives board members an opportunity to discuss the agenda and time to obtain additional information to enable them to act efficiently on the matters in the upcoming meeting, but these too, must be open meetings.

In 2000, the laws were amended to require a notice of the time, date, and place of each meeting be published where it is reasonably calculated to be seen by a majority of the members (association newsletter, bulletin board, website, or e-mail). Further, any member who writes to request such notice must be sent a written notice by first-class mail or e-mail on a continual basis for a full year. Unless exempt from public knowledge (as in an executive session), a copy of the full agenda package and supporting materials for each meeting must be made available to review by the membership. The very clear intent of these amendments is to preclude private board meetings that attempt to avoid the members, and associations should openly publish the schedule and location of all meetings, and welcome the attendance and input of all interested members.

Further still, the board must designate a period of time during each meeting to allow any member present to voice his/her concerns or comment on any matter relating to the association. The board can adopt reasonable rules governing use of this time, i.e., a time limit for each person or subject. Members' comments are often matters for the record, or future attention – they don't have to be thoroughly discussed and decided right now; just heard and acknowledged. In this context, it is constructive to develop a policy of "Reflective Listening" to let the speaker know he/she was heard. "As I understand it, your concern is…" acknowledges and reflects the subject, point, and opinion or position. This is neither agreeing nor disagreeing, avoiding or deciding, or committing the board to any course of action or timetable; it's just listening to and accrediting the speaker.[11] Board meetings can create interest and involvement in the community by helping residents to feel informed, and a part of the decision-making process. It is constructive for the board to listen to, acknowledge, and follow up on issues presented by association members, and

[11] Ibid

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to keep the membership informed of the discussions, progress and action concerning these issues.

Executive Sessions and Privileged Information: - Closed, executive sessions of the board are to discuss privileged, legal and/or private matters but only under very limited and specific subjects and circumstances. Executive sessions are not to be used to circumvent the open meeting requirements, to avoid the attending members, or to "skirt" nagging or contentious issues; the sole purpose of a closed executive session is to protect the privacy of these specific subjects only:

- personnel matters (employed staff or association members);
- consultation with legal counsel;
- contract discussion;
- pending or probable litigation;
- personal liability of members to the association; and
- punitive matters and hearings concerning violations of the declaration, covenants or rules, and consideration of levying assessments for such violations.

An executive session is only one part of an open board or membership meeting. A motion identifying the specific subject(s) and reason(s) for an executive session must be made, seconded, approved and recorded in the minutes of the open meeting. Following the closed session, the directors must reconvene in the open meeting and any agreement or decision resulting from the closed discussions must be voiced and substantially identified and/or voted in the reconvened open meeting for purpose of recordation in the minutes. While agreements can be decided, no votes are permitted in such executive session because the laws prohibit secret voting in board matters. Too often, the purpose and legal provisions for executive session are misunderstood, and sometimes flagrantly misused. It is a clear violation of state law to "adjourn the meeting to go into closed executive session" as many associations have routinely practiced. It is also a violation to convene and conduct an executive session prior to the start of any meeting regardless of how practical or well-intentioned the reason. The board could invite a lawsuit by enforcing a closed-session decision that was not substantially identified and recorded in a reconvened open meeting, and not publicized to the association members.

Board Decisions - The great majority of decisions affecting an association and its members are in the form of resolutions decided at board meetings. There are two main types of resolutions; 1) general or administrative resolutions that address routine matters such as the appointment of members to a subcommittee and, 2) policy resolutions that establish goals, procedures, precedents or restrictions and limitations to guide the

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directors in making consistent and supportable decisions. Some policy resolutions will affect the business operation of the association; e.g., a resolution establishing a contracting or cash disbursement procedure. Others will affect the rights and obligations of members; e.g., a resolution proposing a rule to regulate the use of common areas or a parking policy. The board must ensure that members are informed that a policy change is being considered and that they are given an opportunity to present their views about the proposed policy. All resolutions must be moved, seconded, voted upon, and recorded in the meeting minutes as an official decision of the board. The Community Associations Institute, in Managing a Successful Community Association, (pp. 18-20), and the Institute of Real Estate Management, in The Owner's and Manager's Guide to Condominium Management, (pp. 61-62), stress care in adopting policy resolutions that affect the members' rights and obligations. They suggest that:

- a proposed policy resolution should be drafted as a formal resolution, including the authority of the board and the justification(s) for the policy;

- a proposed policy resolution should be published in the association newsletter (or website if one is established), or copies mailed to members for their information;

- a hearing should be scheduled to provide for member input and discussion of policy resolutions which affect their property rights;

- board action should be taken on the policy resolution only after consideration of the information received from the members. An exception to this is a resolution adopted as an emergency measure in which case the policy is adopted and becomes effective for a limited time period, pending a hearing and permanent adoption of the policy;

- once adopted, copies of resolutions should be sent to all association members, and a copy of the resolution should be included in a "book of resolutions" to maintain a continual record of all resolutions.

General Membership Meetings:

The state laws require all condominium and homeowner associations to hold at least one full membership meeting per year. In reality, this is still a board meeting, but for which the laws mandate a written notice to be sent to all members (even if no members have requested to be notified), and for which the laws prescribe an agenda item, the election of directors. The election of directors is one of the decisions reserved, by law and the recorded governing documents, for the members to decide by their vote. If the directors' terms are for multiple years and are staggered, only one or a very few positions may be elected each year.

Often, community apathy, lack of information and promotion, and "ho-hum" attitudes of members result in a poor or even non-quorum turnout that causes particular difficulties for the board and management. All board members should contribute an aggressive approach to generating membership participation in the annual election meeting. To this end, many

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associations publish bio-sketches and written statements and goals of the candidates in the newsletter or website, conduct a "meet the candidates" night or similar activity, and generally run a "get out the vote" campaign to get the association's members involved.

Other association matters and business may be conducted at this annual meeting, some of which may be voted on by the full membership and others by the directors only, in accordance with the governing documents. The annual meeting does not rescind or bestow different authorities or voting rights upon the directors or the members than is normal. Many associations require an annual audit report and/or annual budget to be presented to the membership for comment, discussion and/or explanation prior to approval voting. Some associations require budget approval by the full membership; others by the directors only. Nevertheless, these are logical matters to be scheduled and conducted at the annual meeting of all members.

Association bylaws normally state when the annual meeting is to be held, the notification procedures to be used, and the requirements for voting eligibility. Some associations publish the agenda for the meeting in the community newsletter, post notices of the meeting on bulletin boards, and mail notices to the residents to generate attendance. In some associations, the order of business for a general membership/election meeting is set by the governing documents. For others, the president, the board of directors, or the management determines the agenda or order of business. A typical agenda includes:

1. Call to order
2. Approval of minutes of last meeting
3. Acceptance of treasurer's report
4. Report of board of directors
5. Reports of all committees
6. Report of management agent
7. Election of officers
8. Approval of assessment/budget
9. Old business
10. New business
11. Adjournment

Points for Effective Meetings - The president or presiding officer must follow the requirements of the law, the agenda, maintain order, and allow for all viewpoints. Knowledge of basic parliamentary procedure is helpful but strict adherence to Robert's Rules of Order[12] is not essential. A successful meeting requires adequate planning, cooperation of all members, and should include:

- advance notice of a date, time and place convenient to a majority of members, distribution of the agenda, issues and procedures, and promotion of attendance;

- selection of a meeting place with enough seating, lighting, ventilation, and parking facilities;

[12] Robert's Rules of Order (ref. Appendix, pg. 261), is a commonly used, private publication that is sometimes specified in the Covenants and therefore binding upon that association's procedures, but is otherwise not binding on most associations.

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- preparation of election ballots, financial statements, committee and general reports, etc., to be distributed at the meeting; and officers' preparation to discuss and answer questions about community issues and problems.

Discussions should not be so short as to prevent adequate consideration of an issue. The time allotted to each issue, however, should be limited to allow the meeting to proceed on schedule. A time limit also alerts members to make their point as quickly as possible and keeps discussion from digressing from the issue. The Fairfax County Public Library has many books that discuss effective meetings. County school and library facilities are available, rent free, for meetings of County nonprofit organizations. The County library has installed listening systems in its community and regional branches to assist persons who are hearing impaired. An association representative must contact/visit the school or library in advance for seating capacity, scheduling and a reservation. Meeting officers should:

- begin and end the meeting within 10 minutes of the scheduled time, adhere to the agenda and set time limits for the discussion of each topic;

- carefully present each motion by providing its historical background, clearly summarize the issue and guide the debate; and

- recognize in turn each person who wishes to speak, keep the discussion relevant to the issue, and maintain the announced time limits.

Quorum - A quorum is the minimum percentage or number of voting members, required by the bylaws to be present in person (or proxy, if permitted), to legally transact business. Quorum size varies from association to association, often being a higher percentage of members for small associations to assure a representative number of voters is present. A 10% requirement for an association of 250 members is more adequate representation of a community than a 10% requirement in an association of 40 members. Virginia laws state that if a quorum is present at the start of a meeting, it is considered to be present for the whole meeting, even if some attendees leave before the meeting is adjourned and those remaining number less than the quorum requirement.

Condominium associations usually have more stringent requirements for a quorum because the unit owners are more dependent upon their association for building maintenance and services, and the association's decisions more closely affect the residents due to the undivided ownership of the common elements. Quorum requirements are often higher for actions affecting property rights or financial obligations of members than for normal association business. Actions to increase the assessment by more than an amount permitted annually by the documents, or a special assessment for capital improvements, or to amend the Covenants, bylaws, or articles of incorporation often require a larger quorum or percentage of the members.

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Proxies - Association members should be encouraged to vote in person, but if not possible, proxies should be used if permitted by the association's documents, because they provide for a greater percentage of the allocated owner/member votes to be cast. A proxy is "a person who is substituted by another to represent him, particularly in some meeting or public body; an agent representing and acting for a principal. A proxy is also the instrument or document containing the appointment of such person".[13] In common terms, a proxy is the signed permission of a valid owner/member that designates another person to cast a vote in place of the owner/member. To be valid, every proxy must designate to whom it is assigned, and must be signed and dated by the owner/member. Proxies are valid only for a specified time period or meeting date. Most associations' bylaws permit proxies for officer elections and association matters, while others permit proxies only for director/trustee elections but not for other matters. The bylaws usually limit the number of proxies that can be assigned to and voted by a single person. A standard proxy form, instructions for completing, and a procedure to accept and record proxy votes should be established by the board and distributed with the official notice of the election meeting.

Two types of proxies, "instructed" and "uninstructed", are commonly used. An instructed proxy authorizes the assigned person to cast the member's vote in a designated way on each specific issue, e.g., to vote for/against a specific slate of nominees, or for/against proposed change(s) in the documents, etc.. An uninstructed proxy does not designate how the authorized person is to vote on each issue. The governing documents of an association allocate votes to the owner/members, however, some documents are silent on who may be assigned by an owner/ member to cast a vote by proxy. While it may not be a violation to choose a non-owner, the voting membership should be reminded (via the proxy instructions) that non-owners have no vested interest at stake and may not understand the impact of a particular issue or director/trustee position to be voted. Moreover, contracted management should have no part or involvement in deciding association elections. Assignment of a proxy to a management company, its on-site agent, or representative (who is not an member of the association) causes a serious conflict of interest, a breach of professional and ethical standards, and could invite a liability claim against the directors and/or the association.

Voting Procedures - Association bylaws often specify that the election of board members must use written ballots but allow discretion as to the method of voting when deciding other issues. Normally this will depend on the preference of members, the size of the association, and the sensitivity of the issue. The Virginia Condominium Act and the Virginia Nonstock Corporation Act have specific provisions concerning quorums, proxies and voting procedures which may be applicable depending on whether the association's bylaws sufficiently detail these matters. For routine business, a voice vote is the quickest and most common. If a voice vote does not give a clear decision, a standing vote, a show of hands, or roll call vote can be taken but may be impractical for a large group. Written ballots are commonly used for important or controversial

[13] Henry Campbell Black, M. A., Black's Law Dictionary, Revised Sixth Edition; West Pub. Co., St. Paul, Minn., 1990.

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issues, and when members wish to vote without revealing their choice. For written votes, paper ballots are distributed to the voters, and are then collected and counted by previously designated persons. The results of the voting should be announced prior to adjournment of the meeting, but may be announced after the meeting is concluded.

Minutes - Applicable Virginia statutes and most associations' bylaws require that factual and accurate minutes be kept of all board of directors meetings, annual meetings, and special meetings of the members. The importance of accurate minutes cannot be stressed enough because often the minutes are the only record of official decisions, directions, and actions of the board. If there is no verifiable record, a decision cannot be enforced. Minutes officially record the time, date and place of each association meeting, the presiding officer and board members in attendance, the subjects discussed, and the actions taken at the meeting. Title and sufficient information to establish its background, the action to be taken if any, and the reasons for the action should introduce each topic. Only important points in the discussion should be recorded along with any decision, and including the votes for or against an issue if voting takes place. A subject or proposal referred to committee or tabled pending further information or discussion should be so recorded in the minutes.

> Too often, meeting minutes become lengthy with the intent of being thorough and correct. The purpose of a meeting is to conduct the business of the association; and the minutes should record what was done or decided, and not what was said or by whom. The minutes should never reflect upon the character, emotion, or personality of any person, or give the secretary's opinion, favorable or otherwise, on anything said or done in the meeting. For important motions, however, the name of the mover should be recorded along with the exact final wording, including amendments, upon which the subsequent vote is taken. The recording secretary should be familiar with "Minutes and Reports of Officers" of Robert's Rules of Order Newly Revised, 10th Rev. edition (November 14, 2000). Meeting minutes, including motions, amendments and votes should be signed and dated by the president or secretary once they have been approved, and should be kept in a binder, file or "book of minutes" for later reference. It may also be helpful to file copies of meeting notices, financial statements, committee reports, and other documents along with the minutes, making them part of the association's official records. Complete minutes can be valuable to an association should it need to document or defend its actions.

Committees:

The Virginia Nonstock Corporation Act provides that a board of directors may create one or more committees and appoint members of the board or the association to serve on the committee. Each committee may have two or more members who serve at the pleasure of the board. The role of committees depends to a great extent on an association's responsibilities and size. Many small associations can function without substantial committee assistance, but larger associations need effective committees to assist the board in handling the overall workload.

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Committees assist the board by researching issues and assuming responsibility for specific aspects of association operation. The bylaws of most associations establish an architectural review committee and a nominating committee and give the board of directors the power to appoint additional committees as the need arises. Most committees are advisory in nature, but under the provisions of the Virginia Nonstock Corporation Act, a board may adopt a resolution delegating limited authority to a committee unless its own documents specifically prohibit such delegation. Committees also help foster a broader member interest and participation in the association and can help keep the board aware of their concerns.

Committees are of two different types: standing committees, which handle ongoing aspects of an association's operation, and special or ad hoc committees, which are established to perform a specific task and are dissolved when that task has been completed. Some associations require that one or more directors serve on each committee. Others appoint non-board members to all committee positions but provide some form of supervision from or liaison with the board. The liaison is frequently the vice president or a board member whose expertise or function in the association corresponds to the committee's area of responsibility; e.g., the treasurer may serve as liaison with a budget committee. Board involvement keeps track of committee activities and lets the Board know if a committee has effective leadership and sufficient members.

The board of directors should write general committee guidelines or terms of reference that portray the association's policy concerning committee appointments, operations and composition. Written guidelines eliminate potential problems and misunderstandings and clarify the prerogatives of the board. Prior to appointing members for a specific committee, the board should prepare guidelines for the committee, spelling out its purpose, authority, resources, and responsibilities. A timetable should be established for progress and final reports to be submitted. The Sample Committee Guidelines at the end of this chapter can easily meet the needs of individual associations and different committees.

The size of a committee should be based on its purpose and the amount of work involved, being large enough to present varying points of view, while not being so large as to be inefficient. The chairperson should be someone with leadership qualities and who works well with the board. It is also helpful if the chairperson is known and liked in the community. It may be advisable to consult with the chairperson and obtain suggestions when choosing members of a committee. While the committee should not be composed of the chairperson's friends, it can be helpful to appoint persons with whom he or she can feel comfortable and work well. The primary criterion for appointment to a committee should be a willingness to work, although academic background, work skills and related experience can be very helpful. Care should be taken to choose persons who will work for the goals of the entire community, not just the desires of a small faction. Personalities can also be considered and used productively when forming committees. If a group must work closely together, compatibility is important and a committee composed of similar personalities may be most efficient. If the group is to explore alternatives and come up with new ideas, diverse personalities may prove most effective.

Committee members can often be found among those who attend meetings regularly, ask good questions and show an interest in the association. Candidates can also be found by a

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periodic questionnaire asking about residents' interests, areas of expertise, and availability. The board should not overlook retired residents who often have time to participate in community activities, or non-working parents who may be aware of the problems and concerns of the young people in the community. Committee work may present an opportunity for new residents with experience in another association to get involved in association activities. When appointing persons to committees, the work involved should emphasize the importance of the committee and the attitude of the board. When a committee submits a report or recommendation, the board should give it careful consideration and show appreciation for the personal efforts involved. A note of appreciation in the newsletter or other type of recognition can do this. If it is necessary to reject or disregard a committee recommendation or report, it should be done diplomatically and courteously. The reason for the board's decision should be explained to the full committee and their work acknowledged just as if adopted by the board.

Architectural Review Committee - The Covenants and bylaws may specify the makeup of an architectural review committee and/or outline the procedures to be followed by: 1) an owner who is applying for an architectural change, and 2) by the association when approving or rejecting a proposed change. The time period for committee rejection of a proposed change is frequently specified as 30 days maximum. If there is no response in the required time limit, the resident is deemed to have complied with the requirements and the proposed change is considered to be approved.

The architectural review committee (ARC) is normally responsible for assuring that any and all changes to house designs or the exterior of individually owned properties, or to the common property, conform to the covenants, are in harmony with the design of the community, and will not adversely affect property values. The governing documents of some associations contain a detailed list of changes that may be made by owners while others simply state that any structure, wall, fence, exterior addition or change is subject to the approval of the architectural control committee. The latter gives an association more latitude to adapt to changing styles, customs and materials, but also places a burden on the association to establish and publicize reasonable standards and guidelines for exterior changes to minimize or avoid subjective evaluations.

Typically the most active, and frequently controversial, of association committees, ARC members must fairly and uniformly apply the requirements and restrictions of the association's governing documents, and not their personal likes or dislikes or tastes. Only the requirements and limitations of the governing documents are legally enforceable. It is important to remember that ARC decisions affect an individual's procedure and is permitted to make the proposed change. The committee is normally responsible for:

- developing and publicizing the procedures that residents must follow when applying to the association for permission to make an exterior change;
- developing and publicizing architectural guidelines, subject to board approval, to assist residents in proposing acceptable changes to their property;
- reviewing all applications for house designs and exterior changes and additions;

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- recommending to the board of directors approval or disapproval of applications as consistent/inconsistent with the covenants and architectural guidelines; and

- investigating complaints and violations of the architectural controls and recommending action to the board.

The committee's primary role is to educate owners in the community of the reasons for and existence of the association's architectural controls, guidelines and procedures. This educational process is an ongoing responsibility and can be achieved by articles in the newsletter, periodic reissuing of procedures and guidelines, including information about the committee among the welcoming materials provided to new residents, etc. The operating guidelines for the committee should include:

- the committee should meet regularly, or if the amount of work or number of applications received does not warrant this, it should meet promptly upon submission of an application or when business under its jurisdiction does arise;
- minutes of all committee meetings should be kept; all approved architectural changes should be monitored to make sure they are constructed as approved; and

- a file of all applications should be maintained. This assists a committee in making consistent decisions by providing a record of action taken on previous applications. A copy filed with records on the individual home may also be advisable should questions arise in the future.

The procedure for the submission and approval of architectural changes should be straightforward and provide the owner(s) with an opportunity for a fair consideration of the request. Such a procedure might include:

- a standard application form to be filled out by the requesting owner and submitted to the ARC;

- sufficient information required by the application form (plans showing the location of the change, samples of the materials, color swatches, specifications, etc.) to allow the committee to make or recommend a decision;

- the right of an applicant to appear before the committee to discuss his/her application and to answer any ARC questions about the proposed change(s);

- an appeal procedure to allow for reconsideration of a denied application;

- a specified (maximum time limit is usually 30 days) for the ARC decision to be returned to the applicant, giving reasons in writing, for a denial.

Publication of the architectural guidelines listing permitted or prohibited changes and the standards by which an application for architectural change is judged, will help to assure that each application is treated fairly. Architectural guidelines must be in accord with the provisions of the covenants and County Zoning Ordinance. They should also be

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compatible with the terrain and architecture of the community, and deal with the normal changes owners frequently want to make in their properties, fences, patios, storage sheds, antennas, chimneys, metal flues, etc. The guidelines should be reasonable and not restrict acceptable building materials to the most expensive or to those that are not readily available.

The guidelines should emphasize that association approval of an architectural change does not relieve owners of the responsibility for obtaining County approval and/or permits for a project. County and association approvals are entirely separate, distinct, and are not related. Depending on the nature and scope of the work, one or more structural, electrical, plumbing, and mechanical (HVAC) permits may be required for a vast range of home improvement projects. Contact the Permits Branch, Department of Public works and Environmental Services at www.fairfaxcounty.gov/dpwes or at (703) 222-0801. The Department has a variety of free pamphlets on home projects that may prove helpful to owners and associations.

Violations of architectural guidelines and procedures should be handled promptly, using an association's standard rule enforcement procedures. (See the discussion of rule enforcement procedures found in Chapter 3, in the section entitled "Rules and Regulations"). In cases where a violation of the association's architectural controls is also a violation of the County zoning or building code, the County may be able to assist the association by enforcing the County Code provision. For information concerning building code violations, contact the Department of Public Works and Environmental Services, Code Enforcement Branch at www.fairfaxcounty.gov/dpwes or tel. (703) 324-1937. Zoning code information is available from the Office of Comprehensive Planning, Zoning Enforcement Branch online at www.fairfaxcounty.gov/ocp/ or at (703) 324-1300. More information about architectural control guidelines and procedures is in: Architectural Control, GAP Report 2, Community Associations Institute, 1986.

Nominating and Elections Committee - A nominating committee makes certain that the nominating schedule and procedures are fair, well-organized, and comply with the requirements outlined in the governing documents. There should be at least one qualified candidate for each position to be filled, and each candidate should understand the responsibilities and duties of the office. The background and qualifications of every candidate should be publicized for the benefit of all voting members. The bylaws of many associations require that a nominating committee be appointed each year at the annual meeting to serve for the following year. This committee may also be responsible for the election itself, publicizing the voting eligibility requirements and procedures, preparing the ballots, and conducting the election. In some cases, the association's management company may perform the procedural tasks under supervision of the board of directors.

The nomination process commonly begins when the committee announces the upcoming election (through the newsletter or election bulletin) and invites all members to run for any of the positions to be elected. Any member of the association can run for any

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position, provided that he/she meets the qualifications stated in the bylaws or the association's documents. Some nominating committees actively recruit candidates to assure a minimum number of nominees for the offices. In other associations, the committee recommends a slate of candidates from among several interested, qualified persons for each position. In this case, the nominating committee chooses those nominees it feels are most capable and/or compatible in the best interests of the association. Prior to the search for candidates, the nominating committee should know the duties of the positions to be elected and should determine if the current board members and/or officers whose terms are expiring have appropriately fulfilled their responsibilities. The committee should know if the incumbent regularly attended meetings, completed assignments, participated in association events, and if they are even interested in serving another term. Current office holders may recommend persons they have worked with, such as committee chairpersons, as prospective candidates. In large associations or those with distinct sections or types of housing, the committee may want to nominate persons from the differing constituencies to represent the interests of all residents.

Nominating procedures most often require that nominations be submitted in writing on a form to be filled out and signed by the candidate. This form should be submitted to the nominating committee or association secretary by a specific date or number of days prior to the election. Often the form must be endorsed by a number of association members. The nomination form can contain space for the candidate to list his/her qualifications, and to explain his/her "platform" or reason for running for office. Once a slate of nominees is chosen, the committee disseminates information about all of the candidates through the newsletter, by sponsoring a "candidates' night" or by preparing special election bulletins.

The election ballots should contain voting instructions, list the vacancies to be filled and the nominees for each vacancy, and leave space for write-in candidates. The procedures for proxy voting, if permitted, should be publicized and proxy ballots or forms prepared and distributed. Some associations send proxy ballots to each member along with the meeting notice, while other associations include them in their newsletter. Each year, an incorporated association's rules should be checked against the Nonstock Corporation Act to ensure conformance with amendments that may have been made to either the Act or the association's rules.

Prior to the annual meeting, the association should notify any members who are not eligible to vote. Many bylaws state that members who are delinquent in their assessment payments or in violation of the covenants may not vote at association meetings. Such members, however, may still attend the meeting. A procedure must be established to check voting eligibility as each ballot is distributed. The slate of officers chosen by the committee should be read, other nominations from the floor accepted, and each candidate should introduce himself and make a brief statement of qualifications, interest and/or ideas for the association. Tabulation of the ballots and announcement of the results should be completed as soon as possible, preferably at the meeting.

Most associations use their president's home address for association mail. The association's address often changes every year or so unless the same person serves

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consecutive terms. Consequently, numerous associations become "out of touch" or "incommunicado" with the County and lose out on many informational mailings. New contact names and mailing addresses should be provided to the District Supervisor's office and to the Fairfax County Office of Public Affairs at (703) 324-3187. This affords the maximum opportunity for associations to be contacted by the Supervisor or the County about issues, events or matters of importance.

Budget/Finance Committee - The budget committee advises the board about the association's financial matters. Its responsibilities may include:

- assisting in the preparation of the annual budget (the committee may meet with other committee chairpersons to identify all areas of association operation);
- conducting a public hearing to obtain member input into the association's preliminary budget;
- making recommendations concerning assessments and collection procedures, budget procedures, audits, tax preparation, and insurance;
- monitoring association finances to assure expenditures are reasonably close to budget projections; assisting the treasurer with his/her responsibilities;
- reviewing, monitoring, and making recommendations concerning refuse and recycling collection costs. Most refuse collection contracts require at least 90 days notice to terminate; if missed, the contract renews automatically, often at a higher rate.

Grounds Maintenance, Landscaping and/or Environmental Improvements Committee(s) - This committee(s) assists and advises the board of directors about maintaining and improving the physical environment in the community. In condominium and apartment-style communities, the maintenance committee may also inspect lobbies, hallways and other interior common areas for the adequacy of janitorial services and recommend long-term maintenance and improvement needs or projects. The duties and responsibilities of the landscape maintenance committee may include:

- inspection of the grounds for maintenance deficiencies and needed repairs; recommending improvements to be made in the landscaping and the general appearance of the common areas;
- development of a grounds maintenance program which includes maintenance tasks and their frequency; preparation of a budget for grounds maintenance and improvements;
- publicizing/informing owners which maintenance responsibilities belong to the association and which belong to the residents; and,

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- preparing bid specifications for landscaping and grounds maintenance contracts, evaluating bids and making recommendations to the board for such contracts.

Communications & Community Relations Committee - This committee provides for various forms of communication between the association and the residents. Its responsibilities may include:

- publishing a newsletter on a regular basis to keep residents advised of actions taken by the board of directors, upcoming community activities, recent house/ unit sales, and other community concerns;

- welcoming new residents, preparing a community directory, and surveying community needs and interests;

- distributing copies of the rules and regulations as they are amended.

A newsletter can be a valuable association tool to keep residents informed about community matters, helps residents feel part of the community, stimulates their interest in the community association, and can be fully or partially self-supporting through the sale of advertising space to local businesses. It need not be elaborate or lengthy and is generally sufficient to:

- provide a regular column for a message from the association president or board of directors;

- report on actions taken at meetings and events that all residents may not have attended (some associations publish the minutes of board meetings and important committee meetings to accomplish this);

- inform and/or remind residents of association procedures, rules or requirements; and discuss issues of community interest such as budget or maintenance concerns, nearby rezoning cases, or local government actions;

- advise residents of upcoming business and social events in the community; provide information of general interest such as a list of babysitters in the community, news of area school and church events, goods and services for sale through a classified section, and Neighborhood Watch news.

Welcoming Materials - It is imperative that new residents be informed about the benefits and responsibilities of living in a homeowners' association. The welcoming procedure, should emphasize the need and desire for the participation and cooperation of new residents. This information should not be confused with the disclosure packet or the Resale Certificate. Welcoming materials provided to new residents frequently include:

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- a welcoming letter explaining the purpose, goals and objectives of the association, a list of services provided by the association, and the rights and responsibilities of residents;

- a copy of the association's documents and rules and regulations, architectural control guidelines, and complaint procedures;

- information concerning board and member meetings, the names of board members and/or management personnel, their telephone numbers, and hours for contact;

- a map of the community and a copy of the latest newsletter, a letter asking new residents to list their interests and abilities, and inviting them to participate in association activities;

- information about the County and its government, bus schedules, schools, emergency phone numbers, location of shopping areas and other interest items.

Recreation/Events Committee - The activities of the recreation committee will depend on the facilities in the community and the interests of the residents. Some recreation committees limit activities to supervision of the community pool, tennis courts, and playground(s). Other committees sponsor social events, organize sports teams, plan trips, and arrange educational activities. If there are several recreational facilities in the development, subcommittees or separate committees are often formed for each facility. Recreation committees are generally responsible for:

- planning a seasonal program, preparing budget recommendations;

- proposing rules governing the use of each recreational facility;

- inspecting each recreational facility for maintenance and repair needs;

- making recommendations to the board of directors concerning long-term maintenance of each facility.

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Sample General Committee Guidelines

1. Composition:
   a. Committees shall be composed of three or more persons based on the purpose of the committee, its responsibilities and workload. One of the members shall serve as chairperson.

   b. Each member of a committee shall be an association member. One or more members of the board of directors may be appointed to serve on a committee.

   c. The chairperson and other members of the committee shall be nominated by the association president and approved by the board of directors to serve at the pleasure of the board of directors for a period of one year. A removal action shall require a two-thirds vote of the board at a meeting at which a quorum is present.

2. Operation:
   a. The committee shall meet at the call of the chairperson who shall preside at the meetings, and present the reports of the committee to the board of directors. The committee chairperson, or a representative from the committee, shall attend all regular meetings of the board of directors.

   b. The committee members shall elect a Vice-Chairperson who shall act in the absence of and with the powers of the chairperson.

   c. A quorum for the conduct of committee business shall consist of a majority of the members of the committee.

   d. Each member of the committee, including the chairperson, shall have one vote; and an affirmative vote of a quorum shall constitute a decision of the committee.

   e. The committee shall maintain minutes of its meetings and maintain adequate records of its activities, reports, expenditures, etc. Minutes of all committee meetings will be submitted to the board of directors within two weeks after the meeting.

   f. The committee shall submit copies of all proposals to the board for approval. If association funds are needed to carry out approved proposals, a list of items and their approximate cost shall be submitted with the proposal.

   g. The committee shall establish such procedures for the administration of its function, as it deems necessary, subject to the approval of the board.

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Chapter 3 - MANAGEMENT

Community associations have specific and legally obligated responsibilities and duties; e.g., physical maintenance, financial record keeping, covenant enforcement, and general administration. The scope of these responsibilities, available resources, and the needs and involvement of association members will determine how well they are accomplished. This chapter describes types and styles of management used by associations to fulfill their responsibilities; it discusses aspects of property management such as facility improvements, contracting procedures, and "people management" concerns such as rules enforcement, complaint resolution, pets, parking, and absentee owners.

Management can be defined as the process by which the available material and human resources are most effectively used to achieve the purpose of the organization. The purpose of property owners' and condominium unit owners' associations is to maintain the common areas and facilities of the development and to protect property and community values. The material resources available to achieve these objectives are the assessments paid by the unit and property owners; the human resources are the volunteer efforts of the directors, committee members, and residents. It is the responsibility of the directors to use and manage these resources as effectively as possible to achieve the purpose of the association.

The board of directors must examine the association's documents to identify all of the association's responsibilities. In addition to the obvious lawn mowing and the upkeep of recreational facilities, they will also include the business functions of record keeping, contracting and correspondence; the fiscal functions of assessment collection, budget preparation and bill paying; and the administrative functions of complaint handling, covenant and rule enforcement, and communications. After identifying the functions to be performed, the Board must decide how they are to be done, by whom, and what funds will need to be allocated. To assure that no task is overlooked and to permit the allocation of the workload fairly among its volunteers, employees and contractors, a list of individual tasks can be developed and each task assigned to a specific individual, contractor or committee. This process will result in a management plan for the association and will determine the type of management the association utilizes. It should be noted that the documents of some associations, frequently those of apartment-style condominiums, require that a professional management firm or professional manager be employed to manage the project. Most associations, however, are free to choose the type of management arrangement they wish.

Types of Association Management:

There are three basic management arrangements utilized by most homeowners' and condominium unit owners' associations and depending on physical and membership size, available budget, scope of association responsibilities, interest or apathy of association members. The type of management used by an association depends upon many factors, including physical characteristics of the community (the number of units, type of housing, extent of recreational facilities), the desires of the residents, and the financial position of the association. A 125-unit townhouse complex, for instance, may use professional management if the majority of owners

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are absentee investors not involved in the day-to-day operation of the community. Self-management might be used if the owners are young families who have the desire and energy to volunteer their services but are concerned about keeping the assessment as low as possible. Regardless of the type of management used, it is imperative that the association informs the residents of the exact responsibilities of its maintenance and management personnel and keeps them apprised of any changes in staffing, procedures or the management's responsibilities. The primary types of association management are:

Self Management - In a self-managed community, the board establishes the policies and procedures to be followed in the operation of the community and supervises the persons who carry them out. Self-managed associations are typically small, have limited facilities, and provide limited services. The success of volunteer self-management depends on the residents themselves and requires dedication, teamwork, and expertise in performing the tasks associated with association operations. This type of management has the advantages of saving money, retaining association control over the tasks performed, and promoting member involvement in the community. The primary disadvantage is that volunteer self-management requires a significant commitment of time and effort. If the burden becomes too much, a volunteer may quit. Sometimes the loss of one or two volunteers with essential skills can cause a volunteer system to fail. In addition, mistakes made through inexperience or lack of expertise, such as improper lawn care or inadequate financial record keeping to substantiate assessment liens, etc., can negate any savings. A volunteer self-management association should seriously consider the breadth and amount of directors' and officers' liability insurance.

Not all self-managed communities depend exclusively on volunteers. Some hire individual employees or contract with one or more firms to perform maintenance or administrative chores when the association does not have the time or expertise. An association may hire a part-time bookkeeper or secretary to handle normal office tasks and contract for ground care and snow removal services. Occasionally, an association pays its secretary and/or treasurer to perform billing, check and letter writing chores. The direct hiring of employees or contractors maintains association control of the services to be provided, consequently the association becomes involved in personnel matters and contracting procedures, which can be time consuming. Employing personnel requires the preparation of job descriptions, scopes of work, and task lists; the completion of the forms for workers' compensation, unemployment compensation, income taxes and social security withholding; and the supervision of employees. Contracting involves the development of specifications, bid evaluation, contract negotiation, and monitoring of the contractor's performance. The costs and benefits of employing staff should be carefully evaluated to make certain an association is receiving the best value for its money.

Some associations employ resident children on a part time basis during holidays or summer. Such employment for mowing, light maintenance, life guard at the pool, clerical work in the office, etc. must comply with the Virginia Child Labor Laws which, with few exceptions, require each 14 or 15 year old to have an employment certificate (work permit) to be legally employed. The association is responsible to verify that a child of 14 or 15 has a valid work permit. Children under 14 are not legally eligible for

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employment. Work permit applications are available at most schools. Contact the Northern Virginia Office of the Division of Labor Law Administration, Virginia Department of Labor and Industry at (703) 691-0178 or online at www.dli.state.va.us. It is important to note that liability insurance generally costs more for self-managed associations than for those which contract with an experienced company for management services, particularly where a swimming pool is concerned. A self-managed association should consider a professional pool management and service company to provide trained and insured lifeguards.

Hired Management – Some associations employ individual(s) to manage the day-to-day operation of the community. Usually, an association large enough to need (and afford) a full-time manager will require other personnel to assist the manager with secretarial tasks, bookkeeping, and routine maintenance. Associations that hire a manager often maintain a manager's office in the community. The presence of on-site staff enables residents to contact management when problems or emergencies arise and helps maintain a consistent level of maintenance and other services.

Hired management requires that the board spend time formulating job descriptions, determining salaries and handling other personnel matters. However, it also permits the association to hire an individual whose background and expertise fit the community's particular needs. Some associations find this preferable to hiring a management firm whose staff is not directly responsible to the board and may not have the specific qualifications desired. The board will still be involved in contracting for services that the manager and staff cannot perform (i.e., trash collection, exterior painting, rebuilding, and decorating), but much of the contract preparation and subsequent monitoring of the contractor's performance can be delegated to the hired manager. It can be difficult to find a qualified manager who has the necessary skills and experience to manage an association and the temperament to work well with the board and residents. A disadvantage of hired management is the problem of providing for a substitute when the manager is absent from the community due to sickness or vacation. Additionally, when a manager leaves the association's employment, the board must take over until another manager is found and trained. While this situation is never easy to handle, written maintenance procedures and a good record keeping system can help the board avoid major problems.

Contracted Management - Contracted management normally refers to the employment of a company that specializes in all aspects of professionally trained community association management and operation. Many management firms, however, also offer consulting services, that can be contracted for on an individual basis. This permits an association to obtain limited management services according to its needs and resources. Contract management of an association provides the staff, support resources, and equipment necessary to perform all the services required by the association. The cost of contracted management is generally based on the scope of services required and the time and resources needed to manage the community. An experienced management firm can reduce waste and inefficiency and save money by instituting procedures that enable the association to run more efficiently, obtaining supplies and services at a savings, and "plugging" the association into its established management and financial systems. An association which contracts for all of its management needs could become too dependent

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upon the firm for information about its finances and general conditions. The board remains legally responsible to be certain that all association business matters are attended to promptly. Generally, contracted professional management companies offer the following services:

- attend board and membership meetings; receive, record and resolve complaints according to policies established by the board of directors;
- handle personnel matters of the management staff, including hiring, supervising, paying staff, and filing necessary reports and forms;
- maintain an inventory of association property and equipment; and provide regular inspections to determine conditions and maintenance needs;
- collect assessments, bill owners, delinquency follow-up and notification to the board of directors; send violation notices to residents;
- maintain association books and records and prepare financial statements when required; disburse funds for normal and recurring expenses and make other expenditures as directed by the board;
- prepare a proposed operating budget; contract for utilities and other services; purchase equipment and supplies; and maintain the common areas and facilities;
- obtain and maintain insurance information and making recommendations to the board of directors; and report insurance claims.

It is important for the management firm to know all limitations stated in the association's documents. When evaluating management firms, the following factors should be considered:

- Experience – The firm should be familiar with the concept of homeowner or condominium association management. Determine how long the firm has been working with associations, how many associations similar to yours it currently manages, and how many units this includes. Make sure the firm's personnel are knowledgeable about the Virginia Property Owners Association Act, and the Virginia Condominium Act;
- Services – Determine whether the firm offers the services your association needs. If any services are subcontracted (grounds and pool maintenance, accounting, etc.), discuss the expected standard of maintenance;
- Reputation – Ask for and check references about the firm's past performance with associations similar to yours. Investigate through professional associations, the police, the Better Business Bureau, and state and local consumer affairs agencies whether a company, or officer thereof, has ever been convicted of a crime, and whether the company's insurance bond has ever paid for dishonesty, act of

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negligence, or other inappropriate or criminal action. Investigate any consumer complaints filed against a company, including how the complaint was resolved;

- Professional Affiliation – Check to see if the firm belongs to one or more professional property management organizations such as the Community Associations Institute, the Property Management Association, or the Institute of Real Estate Management;

- Procedures and Systems – Ask the firm to describe the accounting system that will be used, the collection of delinquent assessments, maintenance schedules, purchasing and billing procedures. Determine if they are compatible with the association's policy and procedures;

- Personnel – Determine the number of persons to work with your community, what training they have had, how long they have been with the firm, and that the staff is bonded;

- Accessibility – How does the firm handle after-hours emergencies?

- Financial Stability – Check the firm's credit rating, insurance and bank references, and check with vendors and suppliers to learn how promptly the firm pays its bills;

- Compensation – Determine how the management fee is computed. Is the fee based on a package of services, extra charges, and separate charge for each service? Does the fee include attendance at board of director meetings and other after-hours obligations?

The information on contracting procedures in this manual, and the following publications should be helpful when contracting for management services:

- Association Management, Community Associations Institute, GAP Report #1, Community Associations Institute, 1998.

- Choosing a Management Company, Community Associations Institute, GAP Report #8, Community Associations Institute, 1998.

Maintenance Management:

Each homeowner community has unique maintenance requirements. A community's design, location, and size as well as the type and quality of the building materials, construction techniques employed, and recreational facilities provided will have a profound effect on the maintenance needs and costs. While most associations have had no control over these factors, they must develop a program to maintain the common areas and facilities in good and safe condition. The degree of actual involvement in maintenance and maintenance planning by an association's board of directors and members will depend on the type of management the

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association chooses. A maintenance plan generally includes the procedures used to handle maintenance requests and maintenance emergencies as well as a schedule for routine maintenance and anticipated major repairs. A good routine maintenance program helps to minimize major problems, extends the useful life of the equipment or facility, permits the board to determine who will perform the work and when, and keeps the community well maintained.

The board should make a list of all the routine maintenance tasks necessary for the grounds, facilities and equipment in the community. While the scheduling of housekeeping chores for lobbies, hallways and stairwells, and routine chores such as lawn care and snow removal is obvious, maintenance and servicing for mechanical equipment should be based on manufacturer's recommendations. A maintenance program should also include periodic inspections to make sure the scheduled maintenance is being performed, and that any conditions needing attention are taken care of. When determining the level of maintenance and the priority of each maintenance task, the association must first consider its responsibility to protect the health and safety of the residents and comply with requirements of the association's documents. In addition, it must consider the costs and benefits involved, as well as resident desires. Some maintenance tasks can be deferred, but this can result in greater costs. The "Operations and Finance" section of this manual discusses maintenance considerations for various facilities and services common to owners' associations. Community associations of all types regularly evaluate their maintenance program and verify that the following routine repairs are properly performed:

- Service Vendor File – lists services available from each vendor, including a contact name and phone number, the vendor's business address, availability of 24-hour emergency service, and service call rates;

- Facility File – contains a record of the maintenance history, complaints, and inspection reports for each recreational or other community facility;

- Equipment File – contains the purchase order, owner's manual(s), manufacturer's equipment maintenance recommendations, a copy of the product warranty, maintenance history, (this file can also be used as the inventory file). If an association is responsible for elevators or boilers, the file should hold the elevator inspection certificate and state boiler safety certification; and,

- Unit File – contains a record of any maintenance or repairs performed by the association on any individual dwelling.

Risk Management:[14]

Accidents happen for a multitude of reasons and causes. Community associations must carry property damage, liability and other insurance to protect against major loss resulting from accidents and injuries on association common property. Although not a technical legal term, (and different circumstances generate different definitions), an "accident" generally connotes:

[14] Kenneth Budd, "It's No Accident", Common Ground, Vol. XI, No.4, copyright by Community Associations Institute, July/August 1995, pp. 10-14. Modified for this publication with permission of the author.

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"An unfortunate event resulting especially from carelessness or ignorance; causing loss or injury which is not due to any fault or misconduct on the part of the person injured but for which legal relief may be sought."[15]

Awareness, education, and development of a risk management program can prevent many accidents. Risk management means identifying areas of potential risk (i.e., the degree or probability of hazard), and preventing "accidents waiting to happen" by taking steps to remove or reduce the risks. Similar in concept to that of defensive driving, risk management is aggressive awareness and positive action to minimize or eliminate the opportunity for accidents. Risk management will not prevent every accident or eliminate every vengeful lawsuit, but it can reduce and minimize the chance, frequency, and severity of accidents and tragedies before they happen.

The purpose of risk management is prevention; first to prevent personal injury and possible tragedy, and second, to prevent major or catastrophic financial loss to the association. The first step is to identify and list all possible risks and causes of accidents and personal injury on association facilities and common property, including passive "buffer zones," "open spaces" and "fringe areas." Particular attention should be directed to the pool, roadways, and play areas, where the activities and typical careless abandon of children at play can be anticipated. The best way to accomplish this is by conducting an annual "walk through" inspection of the entire development with the association's insurance carrier, the board of directors, the association's property manager, and the maintenance manager or foreman. Depending upon the size of the association, the type and quantity of facilities, and the amount of common grounds, an association may even appoint a Risk Management Chairman or committee, who should also take part in the annual Inspection. The property manager, risk management chairman/committee, and members of the board should supplement this major review with monthly or weekly walk-through inspections.

Annual and monthly property inspection to eliminate risks will help to reduce accidents and injuries and protect the association from liability claims. An association should have a formal risk management program headed by one of the directors or responsible member(s) appointed by the directors. Any risk management program should identify risks, measure their impact on the association, prioritize the risks according to severity, chose the best solutions for eliminating those risks, and monitor the results. The program should list the association's insurance policies and contacts for reporting an accident/injury claim; it should record all risk management decisions and changes to the program policy; and document the association's reasons for the changes. The association should develop a written risk management policy to:

- establish risk management goals and objectives;
- define duties;
- coordinate treatment of exposures to loss;
- establish communications channels;
- get the community involved; and,

[15] Webster, A Merriam-, Webster's Collegiate Dictionary, pub. by Merriam-Webster Inc., Springfield, latest online edition at YourDictionary.com

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- provide for program continuity during personnel and board changes.

Because a formal risk management program benefits all association members by reducing the potential for accident/injury, and by reducing or stabilizing the cost of insurance premiums, the association should get all of the residents involved as well. The association can publicize the risk management program in its newsletter or bulletin and ask residents to respond by pointing out situations, conditions, and possible hazards that should be attended to. In exchange, the association can pass on tips from its insurer or risk management professional to help safeguard residents from accident and injury on their own private property within the community. To encourage reporting and feedback from the whole community, the association might sponsor a monthly contest and offer a token cash award, partial reduction in the monthly assessment, or other incentive, (i.e., free entrance to the next association-sponsored function, or reserved priority parking space at the pool/clubhouse for a period of time), etc. If an association wants the best possible insurance coverage and premium rates, a risk management program is essential. "The more the association can do to keep a community safe and free of liability, the more it can do to lower insurance rates,"[16] and to prevent tragedies, before they happen.

Risk/hazard identification does not require a high degree of technical knowledge or equipment, or repeated case histories of accident and injury, but rather the application of plain common sense and awareness. The absence of accident or injury reports does not necessarily mean that the community is hazard free. Visible hazards such as pot holes, broken or uneven walks, rotted trees, broken limbs, play equipment in disrepair, sharp projections, loose handrails, etc. should be written on an inventory list and fixed or removed promptly. Other hazards are less obvious, such as obscured visibility at intersections, lack of warning signs or barriers/fences, insufficient or malfunctioning lighting or safety devices, and even routine but unprotected maintenance operations. In preparation for an annual maintenance inspection, the association can obtain risk identification inspection lists from its insurance carrier or commercial risk management expert. The Project Inventory Worksheets at the end of this chapter can be used to start a comprehensive inventory of association grounds and facilities for an annual risk assessment inspection. Some subjects that can be of particular risk management concern for community associations are:

Swimming pools – are one of the greatest risks facing community associations. Swimmers can easily fall on the deck or hit the bottom of a pool. Most insurance companies view diving boards as an unacceptable risk. The Colorado Supreme Court ruled that an association has a "common-law duty of care" to keep common areas in good condition, including the pool.[17] Another Colorado appeals court ruled in favor of the association, stating that the association would be responsible for the injury only if it was proven to be negligent.[18] Swimming pools are perhaps most attractive when they are closed and no supervision is present; and many accidents (and resulting lawsuits) have happened under these conditions. Security of the pool area to prevent unauthorized use, vandalism, "kid stuff," and pranks is critically important in reducing risk and liability. A durable security fence with heavy duty locks at all gates and the bath house, security

[16] John Manougian, Manougian Ins. Agency, Silver Spring, Md.
[17] A*cierno v. Trailside Townhome Association*, Colorado Supreme Court, September, 1994.
[18] *The Plantation at Lenox Unit Owners' Association v. Lee*, Colorado Appeals Court, 1990.

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lighting of the whole pool area, and even a security alarm with motion detectors can discourage unauthorized use and thereby provide a significant risk prevention and safety factor. Most local governments enforce swimming pool ordinances to assure health and safety considerations for all users. Associations can reduce the risk of negligence at a pool in the following ways:

- lock and enclose the pool area at all times when a trained staff member is not present; provide security lighting and an alarm with motion sensors;
- accurately identify, mark and maintain water depths;
- install handrails for entering and exiting the water;
- change the texture or color of the pool wall at the water line to aid visibility and identification by swimmers;
- separate the shallow and deep ends of the pool with visible, floating buoys;
- remove trash and debris on a regular basis;
- install a textured, slip-resistant surface around the pool to reduce slip and fall type accidents;
- promptly repair all deteriorations such as cracked concrete, broken fence or gate(s), etc.;
- develop and enforce pool rules, and follow local ordinances;
- keep a first-aid kit and life preserver nearby;
- regularly check chemical levels of the pool water to ensure that they are within required tolerances; and,
- lock up all cleaning equipment, supplies and chemicals.

Recreational Facilities, Amenities and Events – Exercise rooms have the greatest potential for accidents with personal injury. An association having such facilities should post signs advising that all users of exercise equipment do so at their own risk, and to see a doctor before using the equipment. A phone, limited to 911 calls only, can be installed for use in medical emergencies. Other facilities such as a gymnasium, clubhouse, tennis or multi-purpose court should be cleaned and maintained regularly with repair and/or replacement of any broken or damaged equipment or accessories. Pre-registration and/or supervision can assure proper use of indoor facilities by the management staff. Limitations and rules for use should be clearly posted within the facility. Hours of operation and written limitations and rules for use can also be distributed to eligible community members annually or semi-annually. Association-sponsored athletic events can create risks as well as enjoyment, and many associations require participants to sign a

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release form to indemnify the association in case of an accident or injury. However, a court may ignore a release form if there are signs of gross negligence, as a Virginia court ruled in 1992.[19]

Sidewalks and floors – Slip and fall accidents are common, and are usually preventable. Downspouts can direct water onto sidewalks that can freeze in winter weather. Leaking or puddled water in lobbies, laundry or other common rooms, and oil puddles in parking lots can be hazardous. Other facilities and locations such as steps and ramps should have a sturdy, secure handrail for added support and stability against imbalance and tripping or falling, particularly where senior citizens may congregate.

Employees – According to Community Association Institute GAP Report #25 – "Community Association Risk Management", employee safety programs are the most important loss prevention techniques for reducing the number of on site work injuries. This is particularly true for associations who employ their own grounds and facility maintenance staff, and who are required to pay for workman's compensation insurance. For associations that contract management, maintenance and/or operational services, employees' accident and injury insurance is usually required in the contract to be provided by the professional service company (employer). In either case, a professionally taught, on-site employee safety program covering the handling of equipment, supplies, chemicals, and work procedures can be very beneficial for a community association's protection and risk management.

Fires – One of the best risk management tools is a posted fire evacuation plan, particularly for multiple family dwelling structures such as garden-style and high-rise condominiums. A fire evacuation plan for such structures is usually required by either County ordinance or state law. Most fire departments can assist an association in developing an evacuation plan. Smoke detectors, fire extinguishers, and sprinkler systems are also effective risk management tools, and are usually required by fire codes for all places of public gathering.

Contractors – Managing an association's contracts is a key part of risk management. Any contractor who lacks adequate insurance can trap an association if there is an accident. It is, therefore, essential to ensure that the contractor is properly and adequately insured and protected, and that this requirement, with dollar amounts of coverage, be clearly identified and written into the contract. Contracting procedures (chapter 5) should include having the association's insurance carrier and attorney review the proposed contract document(s) for sufficient type and amount of insurance to be provided by the contractor. Unless the contract is properly written, the association is likely to be charged if a contractor or his employees are injured on association property. An association should always require a copy of the contractor's insurance certificates and appropriate licenses and contact the issuing authority to ensure that they are current and A-rated. Associations should also require contractors to have specialized liability insurance

[19] *Hiett v. Lake Barcroft Community Association*, Fairfax, Virginia, Virginia Supreme Court, 1992.

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covering the proposed work, i.e., pollution liability coverage if chemicals are to be used, vehicle liability covering needed vehicles, and workers' liability. The best way to know that these coverages are in place is to call the contractor's insurer.

"People" Management:

Living in a community with shared facilities requires that all members cooperate with their neighbors to create and maintain an enjoyable living environment. Human nature being what it is, this living environment is usually achieved by the development and enforcement of rules and regulations that inform all members of the limitations and expectations placed on their personal activities. Association rules and regulations generally govern the following:

- implement the architectural controls and other use restrictions (i.e., noise, trash, storage, parking, etc.) outlined in the Covenants;
- outline the procedures to be followed by residents when dealing with the association (i.e., when, where, and to whom, etc.);
- regulate the conduct of residents and guests when using the common facilities.

An association's governing documents typically give the board of directors the authority to issue, rescind and amend an association's rules and regulations. This authority flows from the responsibilities of the association to protect the health, safety, and welfare of the residents; to maintain the common areas; and to protect the property values in the community. The documents of some associations specifically state that the board of directors has the authority to adopt and enforce rules concerning facility use and the personal conduct of members and their guests when using the common properties. Other association documents merely include a provision that requires the board to exercise all reasonable authority vested in the association. The Property Owners' Association Act and the Condominium Act expressly provide such authority to boards, except where the documents reserve the power to the members. The Acts also provide that the members may repeal or amend any rule or regulation by a majority of votes cast, in person or by proxy at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose.

Rule Adoption - The overall size of the community, the kind of dwelling units, and the number and type of recreational facilities for which the association is responsible will affect the number and type of rules. Association rules usually relate to the enforcement of the architectural controls, restricting specific actions on common and private property, and collection of assessments. An association with many recreational facilities may find that more comprehensive rules are necessary to protect all members' rights and to minimize the association's liability risk. Each rule increases the management burden and should have a specific purpose, whether to prevent an unwanted situation, resolve a reoccurring problem, control behavior, or simplify management of a facility. When a new rule is proposed to address one of these conditions, the board of directors should be certain that:

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- the proposed rule addresses an identified problem, and all reasonable alternatives to adopting a new rule have been made (e.g., trash baskets may eliminate littering);
- the proposed rule is consistent with the association's documents. The authority to adopt a rule must be based on the powers specifically given to the association in the documents, and related to the association's duties and responsibilities (e.g., protecting the association from liability or accidents, etc.);

- the rule is clearly worded, easily understood and stated in a positive manner. Stating what is permitted rather than what is prohibited can be effective in obtaining compliance, e.g., "Dog walking is permitted in the following areas..." or "Ball playing is permitted only...";

- the rule must be fair, apply to all residents equally and be consistently and equitably enforced. Penalties should be appropriate to the infraction and offender. An association must be careful when enacting penalties for rule violations. Some documents permit the suspension of a member's voting rights and rights to use the recreational facilities for failure to pay the assessment; other documents permit the levy of monetary charges for infractions of the rules and regulations. Check with its attorney prior to enforcing penalties for rule violations; and,

- the rule must be reasonable and enforceable, (e.g., noise from a play area cannot be eliminated, but it can be controlled by scheduling hours of use, supervision, etc.).

The board of directors should publicize a proposed rule via the newsletter, mailed notices, and/or bulletin boards to involve residents in its rule-making procedure, and ask for written comments or schedule a hearing for membership discussion of the rule prior to enactment. This process allows modification of the rule before enactment, gives the board an opportunity to explain the reasons for the rule, and helps to increase understanding and compliance when it becomes effective. Most importantly, it fulfills the need for due process that is required by state law and enhances the enforceability of the rule in the eyes of a court if the rule is challenged.[20] When publicizing a new rule or set of rules, the board of directors should clarify to whom the rule applies, when does the rule become effective, what is the reason for the rule, and what benefits will be derived from it?

It is also important to clarify what is the authority for enacting the rule ("...in conformance with Article VII of the Bylaws, the board of directors has resolved..."), and who will enforce the rule (the architectural control committee, the board of directors, the management agent, the lifeguard on duty, etc.). Once adopted, a rule should be published in its final form in the newsletter or a copy should be mailed to each resident. If appropriate, it should be permanently displayed at the facility to which it applies, e.g.,

[20] F. Scott Jackson and David Baratti, Strategies for Successful Enforcement of Rules and Deed Restrictions, CAI Research Foundation, Monograph Series, Vol. 1, No. 1, Alexandria, VA, 1978, p. 6.

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pool, tennis court, party room, etc. Many associations periodically publish a handbook that includes updated rules as well as pertinent information concerning the community.
Rule Enforcement - Rule enforcement is often contentious and difficult, but it is essential that infractions be dealt with promptly and uniformly, using an adopted and published rule enforcement procedure. The procedures necessary to enforce a rule vary depending on the rule violated and severity and/or frequency of the violation, but generally a board member(s) should approach the violator to informally discuss the problem. Very often quiet discussion of the problem results in correction of the condition and compliance with the rule. If informal procedures do not work, the association should initiate formal notification and enforcement procedures. The Property Owners' Association Act and the Condominium Act require that a formal written violation notice be hand delivered (and signed for) or mailed to the offending property owner by certified or registered mail, return receipt requested. The notice must include:

- a statement of the violation or infraction, identifying and quoting the specific covenant, condition, restriction, rule or regulation of the association, and clearly referencing the association's authority for enforcement;

- the potential penalty for failure to comply with the rule or to correct the condition;

- what must be done to correct the violation, and providing a reasonable and acceptable time period for compliance.

The written notice must also state that the owner has a right to present his side of the problem at a formal hearing and that he/she/they may be represented by counsel (at the offender's choice and expense). Charges for a tenant's violations must be assessed against the property owner/landlord and not the tenant. It is the owner's responsibility to provide the rules and regulations to a tenant, and to secure reimbursement for any charges levied for rules violations. The association may set the hearing date or just provide a time limit for the offender to request a hearing, giving an acceptable date, and to notify the board of intent to be represented by counsel. Such hearings are usually held before the board of directors, the Covenants Committee, the Architectural Review Committee, or other tribunal designated in the governing documents. Such violation hearings are one of the few explicit reasons permitted by law for a closed executive meeting to protect the privacy and integrity of the individual member involved.

The hearing should be conducted as an impartial fact-finding opportunity to reveal relevant circumstances surrounding the situation, including the severity and frequency of the alleged violation, and the member's misunderstanding, attitude, inability or refusal to comply. Although the association's covenants and rules, etc. are to apply uniformly to all members, the board should consider that members of foreign cultures may not understand the governing authority of the association in relation to the ownership of private property. Further, the board must always remember that the purpose of the enforcement procedure is to gain compliance with the covenants, conditions, restrictions, rules and regulations rather than to collect extra funds, to penalize members, or to exert its authority as a power play. Within a reasonable time period following the hearing, the board should discuss all information presented at the hearing and vote upon

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whether to accept the member's reasons for non-compliance. The Board can, with reason, decide to waive or enforce application of the rule, accept a delayed compliance schedule, begin to assess financial charges (against the property), suspend the member's use of facilities and services, or apply other penalties for the violation as allowed by law and the governing documents. For both condominium and property owner associations, the results of the hearing must be delivered in writing within seven (7) days to the member by hand delivery or by registered/certified mail.

Financial charges and penalties for covenant and rules etc. violations are applicable only as of the date of the board's or committee's final vote and not retroactive to the date of the initial violation notice. Financial charges for rules violation are treated as an assessment against the offender's property for the purpose of recording and for suspending a member's right to use facilities and/or non-essential services. However, such assessments must be unpaid for more than 60 days before either provision of the Acts can be implemented. If there is still no compliance by the offender within a specified time, a letter from the association's attorney can outline other legal steps that may be taken to obtain compliance. Under the Property Owners' Association (POA) Act, the rules and regulation may be enforced by any method normally available to owners of private property in Virginia. This includes, but is not limited to, application in court for injunctive relief and/or damages, during which the court may also award legal costs and reasonable attorney's fees to the prevailing party in such proceeding.

Complaints and Resident Disputes - When people must abide by rules and regulations for the general good of the community, complaints will be received from residents about wrongful actions or inaction of others, and of the association itself. Most disputes arise from simple misunderstanding, ignorance of requirements, and/or lack of information and can be settled quickly and amicably by discussion. Other disputes and problems may involve legitimate interpretive conflicts of association rules and governing documents or applications thereof, while still others involve personality or behavior conflicts rather than a violation of rules or covenants.

An association and/or its attorney should review its Covenants, rules and regulations, and other governing documents to verify that a dispute involves a legitimate violation. If a situation can be resolved by communicating directly with the other party, the association may not have to resort to judicial means of resolution. Therefore, the board should develop a due process procedural system for handling complaints and disputes (Legal Assistance, Chapter 6). For many residential community situations there has been an increase in the use of alternative dispute resolution (ADR) in resolving association disputes. ADR is not appropriate in every case, but when suitable, it can be a more positive (and less costly) experience than litigation. The most frequently employed forms of ADR are mediation and arbitration. In arbitration, a neutral party (or panel) hears both sides of a dispute and renders an oral or written decision, the parties to the dispute having decided in advance whether the decision will be binding or non-binding.

Mediation is an informal, non-confrontational participatory procedure to reach an equitable and positive solution. Mediation differs from arbitration in that the neutral

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party remains impartial throughout the process, never imposes judgment but rather facilitates a voluntary resolution between the disputing parties. Both parties remain in control of the process, each has the option to stop at any time and to have independent counsel to protect his/her legal rights; and mediation does not prevent or preclude either party from using other dispute approaches, or judicial action. The mediator assists the parties in recognizing and identifying their respective interests and objectives which provides the basis for a jointly acceptable resolution. Disputes that are appropriate for the mediation process include:

- neighborhood disputes, (i.e., loud music, animal and parking problems, dangerous conditions of land, parental responsibilities for their childrens' actions, etc.);
- homeowner property disputes, (i.e., antenna and/or signal reception problems, aesthetics or dangerous conditions);
- recovery of money and property; and
- construction defects.

The key to successful mediation is that both parties know and accept that there is room to maneuver; if there isn't room or joint willingness to find an amicable resolution, mediation may not be the answer. Mediation cannot change lifelong patterns, attitudes and beliefs. Issues that cannot be mediated involve attitudes and beliefs (racism, sexism), unmanageable behavior, problems resulting from substance abuse, disputes involving violence or the potential for violence, and other matters involving a severe imbalance between the parties. Other complaints can be resolved by correcting the problem through formal action on the part of the association to enforce existing Covenants or rules and regulations. Formal passage and adoption of a new rule or regulation or clarifying the interpretation and application of association policy may resolve a situation for which there is no applicable rule. Lastly, the board may inform a complainant that a situation will not, or cannot be changed.

Because oral complaints are frequently made in the heat of anger or exasperation when the facts are usually exaggerated and/or inaccurate, many associations accept and recognize only written and signed complaints, which helps to eliminate those that are spurious, frivolous or invalid. A standard complaint form requiring detailed information and the relief sought by the complainant is helpful. The names of complainants should be kept confidential, particularly if the complaint involves another resident. Complaints are often directed to the president or the board of directors and referred to an appropriate committee for investigation and resolution. If an association is professionally managed, the property manager may be responsible for receiving and resolving complaints. If the manager or committee cannot satisfactorily resolve a complaint, it can be returned to the board of directors with a recommended resolution for board consideration and decision.

All written complaints received by an association should be recorded, and the attempts to resolve them noted in association records. The complainant should be kept informed of any actions taken to resolve the complaint and receive written notice of the

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final resolution of the complaint. This type of procedure helps to insure that all complaints are promptly acted upon and dealt with in a consistent manner. It also provides board and committee members with background information on how similar problems were handled in the past, and assists an association in spotting recurring problems. It should also be noted that if a complaint alleges a violation of the association's declaration, then any lot owner, group of owners, the association, the Board of Directors, or the managing agent (on the association's behalf) may bring suit for damages or injunctive relief.

Pets and Animals; County Animal Control Ordinance - Pet restrictions under the Fairfax County Code, Zoning Ordinance and Animals and Fowl Ordinance, (more commonly known as the Animal Control Ordinance) are applicable to all citizens. It prohibits animals from running loose on public property, requires that dogs be leashed when off of their owner's property, prohibits animals from trespassing or damaging (soiling) another's property. The covenants and bylaws of an association may also impose additional pet restrictions on association residents.

The Animal Control Ordinance requires rabies vaccination and licenses for all dogs, and rabies vaccination for all cats 4 months of age and older. The ordinance requires that the Department of Animal Control or the Police Department be notified any time an animal bites a human. The animal must be quarantined for ten days for rabies observation at the County animal shelter or a licensed veterinary hospital. An animal may be quarantined at home if it is confined and isolated from all humans and animals, has a valid rabies certificate, and such home quarantine receives approval of the warden investigating the case. Vicious, dangerous and wild animals are prohibited as pets, and prohibits cruelty to any animal. The soiling (damaging) of private property with animal feces, including the common areas of an association, is an annoying and aggravating occurrence in residential areas. Some associations sell "pooper-scoopers" to animal owners and/or designate a specific area of the grounds for pet walking. Fairfax county Code, §41-2-6 "Animals causing insanitary conditions" (the Animal Control Ordinance, often referred to as the Pooper/Scooper Law), states:

> *"It shall be unlawful for the owner of any animal or animals, to keep such animal or animals in such a manner as to cause insanitary conditions. The owner or custodian of any dog shall be responsible for the removal of excreta deposited by such dog on the property of another, including public areas."*

The Fairfax County Nuisance Noise Ordinance specifically prohibits owning or keeping any animal which frequently and habitually makes noise that is "plainly audible across property boundaries or through partitions common to (2) persons within a building" (such as an apartment or condominium). Enforcement of this ordinance is handled by the County Department of Animal Control (tel. (703) 830-3310) daily during normal duty hours (M-F, 7AM to 10PM; and S-S, 10AM to 8PM), and by the County Police Department during non-duty hours.

Enforcement of Animal Control Ordinance – County animal wardens are responsible for enforcing County ordinances dealing with animal control and cruelty to animals; police

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officers may also enforce these ordinances. Virtually all provisions of the Fairfax County Code, Chapter 41 apply to both public and private property. An exception to this is the "Leash Law," Section 41-2-4, that provides that: "[n]o dog shall run unrestricted in the County" and requires animal wardens to "seize and impound any dog found off the property of its owner when such dog is unrestricted." Many homeowner and condominium associations prohibit dogs off-leash on the common grounds/elements, and would like the Animal Control Officers to enforce the ordinance on the common areas.

Since at least 1997, upon the advice of the Office of the County Attorney, the Department of Animal Control has enforced the leash law on common areas so long as the association provided proof of adopted rules and regulations allowing the enforcement of this ordinance. However, in order to give clear notice to both residents and Animal Control Officers that the leash law would be enforced on common grounds/elements, the Department of Animal Control also required homeowner and condominium associations to post a sign to that effect at the entrance(s) to the association property. The signage requirement is not imposed in the ordinance, but it has been the policy and practice of Animal Control to request such sign(s). Since 2001, the Department of Animal Control is part of the police department, and due to recent inquiry and review of the former policy and practice, the police department has concluded that the signage is not necessary. The Animal Control Division can enforce the ordinance on association property if the Animal Control Division has a written notice on file verifying that the association has adopted written rules and regulations allowing such enforcement. The Division must also have a map clearly showing the streets and areas included within the association's property. Several sections of the Animal Control Ordinance of particular application to residential community associations are referenced in the Ordinance section of this manual. Contact the Department of Animal Control online at www.fairfaxcounty.gov/ps/ac/homepage.htm or call (703) 830-3310.

Zoning Provisions and Restrictions – The Fairfax County Zoning Ordinance (Chapter 112 of the Fairfax County Code) also governs the keeping of animals in residential areas, prohibits livestock, limits the number of dogs that may be kept, and provides civil penalties for violation of these pet restrictions. Chronic offenders should be reported to Zoning Enforcement Branch at (703) 324-1300 or online at www.fairfaxcounty.gov. When Zoning Enforcement confirms a violation, a notice is sent to the property owner. Each day the violation exists constitutes a separate offense and a civil violation summons may be issued. The property owner may pay the initial $100 fine to the Fairfax County Office of Finance, or may appear in the General District Court to contest the violation. The same violation can be charged only once in a ten-day period with a maximum total fine of $3,000. Continuing violations are subject to a fine of $150.

Association Restrictions - Pet problems are among the most difficult to resolve, particularly in condominium and apartment-type communities where elevators, halls, lobbies, and open spaces are common grounds/elements jointly owned by all of the unit owners. It is important for an association to have its own comprehensive rules governing pets and pet owners because the association is solely responsible for enforcing covenants, bylaws, or rules and regulations. The Fairfax County Department of Animal Control (wardens) cannot enforce (private) association rules and regulations dealing with animals.

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Pet rules should protect the health, safety and welfare of community residents and property rather than penalizing pet owners. Rules should clearly state what is expected of pet owners, and the consequences of their noncompliance. If the Covenants permit one "small" dog per unit and the board of directors interprets this to mean a dog weighing not more than 25 pounds, this standard should be clearly stated. Some associations require that all pets be registered with the association, restrict the size and number of pets, and provide that pet owners are responsible for any damage caused by their pet. Alleged pet rule violations should be submitted in writing with the complainant's signature, and must be specific as to the pet owner's name or address, the rule violated, and the date, time, and place of the violation. Such violations should be investigated promptly and resolution of the complaint should follow the association's due process procedures. An assessment for any cleaning or repair costs should be imposed on the pet owner if so provided in the rules. Pet Peeves and What to Do About Them by the Community Associations Institute (see Appendix) provides additional information on resolving pet problems.

Absentee Owners and Tenants - Many homeowner and condominium associations have absentee owners who rent their single-family house, townhouse or condominium unit. The Virginia Condominium Act and the Virginia Property Owners Act are silent with regard to tenants and rental agreements. An association may require the property owner/member/landlords to provide a copy of their lease agreements to the association office, but the association has no legal standing or authority to impose, restrict, require or otherwise interfere with the rental agreement. There is no direct line of authority or enforcement between the association and tenant(s) residing in homes and units under the association's control. Association directors and management need to know and understand the association's relationship to such tenants.

The Virginia Residential Landlord and Tenant Act (VRLTA) defines the rights and responsibilities of tenants and landlords and governs their rental agreement in multi-unit apartment structures. However, the VRLTA was not intended to govern individual home rentals; it exempts landlords in Fairfax County from applicability of this Act in its entirety if they own and rent four or fewer rental units or properties. Thus, most single-family detached home, townhouse and condominium unit rentals are not covered by the VRLTA. Because of this exemption from the VRLTA, the lease agreement is the sole governing document, the "rules of the game." Tenants in these situations have a legal occupancy of the premises by the authority of the lease agreement with the property owner.

Homeowner and condominium association authority and control is restricted to the common grounds/elements and the exterior of the private properties. The absentee owner, however, is still responsible for any assessments and/or other legal actions against the property as provided for in the association documents. If a rules or covenant violation occurs due to the tenant's behavior, the association must issue a violation notice to the owner/landlord who is still responsible to the association for the property. If the violation is not corrected and is upheld through due process, any resulting penalty must be assessed

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against the property, and it is up to the owner/landlord to collect any reimbursement from the tenant. If a rental agreement provides for the tenant's access to and use of association facilities (pool, tennis court, clubhouse), such access and use cannot be denied due to the tenant's violations unless the adopted rules and regulations provide for such denial of use for all members.

If the owner/landlord becomes more than 60 days delinquent in the payment of regular, special or violation assessments against the property, the suspension of privileges (as allowed by the respective state laws) can be enforced against the tenants even if their behavior has been exemplary. In cases of severe violations, the association cannot initiate eviction action or even force the owner to do so; the association is limited to assessments against the property. Although the association cannot mandate lease provisions, it can remind its owner/members of their continuing exposure to and responsibility for their tenant's behavior during the term of the lease. A prudent owner/landlord will provide in the lease agreement that the tenants must adhere to the covenants, conditions, restrictions, rules and regulations of the association and that they are responsible for reimbursement of any financial assessments during their tenancy.

Condominiums attract the great majority of absentee-owner rental-investors, which can cause several difficulties. When unit rentals exceed 30-40%, the condominium often takes on the visual attributes of a commercial apartment complex in which the tenant occupants have little or no attachment or vested financial interest in the property or in its resale value. Because of this threat to unit valuation, leaders in the secondary mortgage market have established a maximum rental level of about 40% of total units, above which they will not finance resale mortgages. Consequently, many condominium associations have attempted to restrict or prevent the rental of the privately owned units. Current unit owners, however, seem to have a legitimate claim that any such rental restriction violates their rights because they purchased for investment when there were no restrictions. Some condominiums with this conundrum have successfully amended the declaration to prohibit all rentals by future purchasers but still allowing current owners to continue renting under a "grandfathering" clause or exemption. This protects the current owner's interests; stops similar interests and expectations of future owners; eliminates the negative aspect of high-density rentals; and avoids probable litigation and costly settlements.

<u>County Ordinances</u> - While Fairfax County does not have an ordinance specifically governing the rental of dwelling units, it does have an ordinance related to occupancy restrictions, and the County enforces state housing standards that may have significance for both the association and owners leasing their homes. Chapter 112 (the Zoning Ordinance) of the Fairfax County Code, Section 2-502 "Limitation on the Occupancy of a Dwelling Unit," allows the following:

- occupancy of a dwelling unit by a family group of two unrelated adults and their own dependant children, for up to a total of six (6) children;

- roomers or boarders constitute a home occupation use for which a home occupation permit is required;

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- a group of not more than four (4) persons not necessarily related by blood or marriage; however, occupancy by four (4) unrelated individuals must function as a single housekeeping unit;

- a group residential facility which may consist of up to 8 mentally ill, or mentally or developmentally retarded persons with resident staff;

- any group housekeeping unit of not more than ten (10) persons approved by the Board of Zoning Appeals in accordance with Section 8-300 of the Zoning Ordinance (Institutional Uses); and,

- one (1) or two (2) persons one of whom shall be elderly and/or disabled as defined in Section 8-918, and one (1) or both of whom own the dwelling unit, plus one (1) family, which may consist of one (1) person or two (2) or more persons related by blood or marriage, and with any number of natural children, foster children, step children or adopted children.

The Virginia Condominium Act permits the association to establish and enforce its own occupancy standards and limitations. Additionally, Volume II (Building Maintenance Code) of the Virginia Uniform Statewide Building Code prescribes a variety of occupancy, ventilation, sanitation, structural and other health/safety/welfare requirements for all residential structures, whether occupied by owner or tenant. Unless constructed many years ago, units in the association will likely comply with the current health standards. Information about enforcement of state health code standards can be obtained from the County Health Department online at http://www.co.fairfax.va.us/service/hd/hdweb.htm , or at (703) 246-2300. The Fairfax County Tenant-Landlord Commission and the Consumer Protection Division provide information to the public on tenant-landlord affairs. The Division also receives, investigates and attempts to resolve tenant landlord complaints through mediation, and members of the Tenant-Landlord Commission can be called upon to form an arbitration panel to settle the matter, if both sides agree to be bound by the panel's decision.

Association Rental Restrictions - Leased units often present problems for associations caused by both owners and renters. An absentee owner may be more inclined to become delinquent in paying association assessments when not directly enjoying the services provided by the association and it may be difficult (or impossible) for an association to collect delinquent assessments from absentee owners using its normal collection procedures. Tenants, on the other hand, may not have the same sense of responsibility to the community as an owner and may disregard association rules or fail to satisfactorily maintain the dwelling they rent. Some tenants may not even be aware of the existence of the association or its rules until they are contacted about an infraction.

Many condominium documents have detailed regulations regarding the leasing of units. The regulations may specify a minimum rental period (usually 12 months), require that a specific lease be used, and require that the tenant and lessor sign a statement that acknowledges that the tenant has been given a copy of the association documents and

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rules and regulations. Most association documents, however, are silent concerning the leasing of units, stating only that an owner may delegate his/her right to the enjoyment of the common areas to a tenant. If an association has a problem with absentee owners or their tenants, it may choose to amend its bylaws to require that a copy of all leases must be filed with the association, and that:

- owners who lease their units must leave a forwarding address and telephone number with the association when they leave the community. This enables association contact concerning delinquent assessments, special assessments, proxy voting, and assures that the association will be able to reach them in case of any emergency;

- owners must submit the names of their tenants to the association, which enables it to correspond directly with the tenant and assists in the issuance of pool passes, the mailing of rule change notices, newsletters, and other items directly affecting a tenant's enjoyment of the community;

- all leases must contain a clause notifying the tenant of the obligation to abide by the covenants, bylaws, and rules and regulations. (An attorney can provide a standard clause for duplication and attachment to a standard lease).

Some associations encourage tenants to be an integral part of the community by providing the same welcome/orientation materials as provided to purchasers, by promoting tenant participation in association activities, and by appointing tenants to serve on association committees. These actions tend to minimize the problems often associated with rented units and can give tenants a greater sense of belonging. Some owners give tenants limited proxy rights, permitting them to vote for such things as the board of directors, while retaining the owner's vote for items which affect property rights, such as bylaw amendments or assessment increases. Owners must be certain that such permission is allowed by the governing documents.

Association Parking Restrictions - Due to limited parking spaces and increasing numbers of vehicles, many condominium and homeowner associations have adopted or are planning to adopt restrictions or prohibitions covering inoperative vehicles; those with expired decals, inspections, and/or registration; and over-sized SUVs and commercial vehicles. The application of an association's official parking policy depends upon the ownership of the parking location. State laws provide clear authority to condominium and homeowner associations to adopt a restrictive or prohibitive parking policy on the association's privately owned roads and common grounds. State law also prohibits parking any vehicle in an officially marked fire lane or within 15 feet of a fire hydrant on public or private property.

Section 82-5-7 of the Fairfax County Code prohibits parking any commercial vehicle on publicly owned roads and highways, even those within condominium and home-owner associations except when picking up/delivering passengers or merchandise, or during work or service at a residential location. This law permits one resident of each single family dwelling unit to park one licensed taxicab or limousine on such roads if

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curbside parking is permitted for any vehicles. Association authority does not apply to publicly owned roads, thus an association cannot prohibit a resident member (or tenant) from parking one taxicab or limousine on a public road in front of his/her residence.

In the order of precedence regarding authorities (see page 37), an association's declaration is subservient to provisions of the County Code. Association covenants regarding the exterior use and appearance of the members' private properties (i.e., basketball hoops, house colors, and window trim, etc.) are enforceable because the County and state codes are silent on such matters, hence there is no conflict. However, a gray area exists where and when associations attempt to restrict the parking of commercial vehicles on members' privately owned driveways. A prohibitive parking policy resolution adopted under the authority of the association's declaration conflicts with the County Code. Section 10-102, item 16 of the Fairfax County Zoning Ordinance permits:

> *"Parking of one (1) commercial vehicle per dwelling unit in an R district subject to the following limitations:*
>
> *A. No solid waste collection vehicle, tractor and/or trailer of a tractor-trailer truck, dump truck, construction equipment, cement mixer truck, wrecker with a gross weight of 12000 pounds or more, or similar vehicles or equipment shall be parked in any R district.*
>
> *B. Any commercial vehicle parked in an R district shall be owned and/or operated only by the occupant of the dwelling unit at which it is parked."*

Further, Section 20-300 of the Fairfax County Zoning Ordinance provides the following definitions;

> ***Accessory Use**: Accessory uses as permitted by this Ordinance are subject to the provisions of Part 1 of Article 10. An accessory use is a use or building which:*
>
> *1. Is subordinate to and serves a principal use; and*
>
> *2. Is subordinate in purpose, area and extent to the principal use served; and*
>
> *3. Contributes primarily to the comfort and convenience of the occupants, business enterprise, or industrial use served; and*
>
> *4. Is generally located within the building housing the principal use served,*
>
> *except as qualified by the provisions of Sect. 10-203; and*
>
> "***Commercial Vehicle**: Any vehicle with a rated carrying capacity of 1500 pounds (3/4 ton) or more, and any vehicle, regardless of capacity, which displays advertising lettered thereon or which is licensed as a 'for hire' vehicle. For the*

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purpose of this Ordinance, commercial vehicles shall not be deemed to include any vehicle operated by a public agency (except those vehicles set forth in Par. 16A of Sect. 10-102), farm vehicle or equipment located on property used for agricultural purposes, motor home, camping trailer, boat, boat trailer, horse trailer, or similar recreational equipment recognized as personal property and not for hire, emergency fuel oil delivery truck which has been approved by the County, and/or any public or private vehicle used exclusively for the transportation of persons to and from a school, place of religious worship, or activities related thereto."

The above provisions of the County Code are permissive of parking commercial vehicles on private residential property provided that the vehicle meets the definitions and limitations as stated. Application of association's restrictive parking resolution to privately owned driveways would conflict with the higher precedent authority of the County Code, and thus be unenforceable. Associations considering such prohibition of parking commercial vehicles on the private properties within the association should seek legal counsel to avoid the possibility of a lawsuit.

Abandoned and/or inoperative (junk) motor vehicles, trailers and semitrailers are not permitted on residential property except in a fully enclosed garage. A license check through the police department allows an association to notify the owner that such vehicle must be removed. Inoperative means any motor vehicle, trailer or semitrailer which is not in operating condition, or which for a period of sixty (60) days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle. An abandoned vehicle is one that does not bear a current license plate, valid state inspection certificate, or current County decal, and has been in one location without being moved for at least 4 days. An association may request a duly authorized local official or law officer to issue a notice of parking violation to the registered owner of the offending vehicle.

Most community associations have rules concerning the parking, storage, home maintenance, repair, and guest/visitor parking of all vehicles, including cars, trucks, recreational campers and motor homes, boats, trailers, etc. on (privately owned) association property. These rules and regulations can not apply to public streets within the association's boundaries, and it is the association's responsibility to enforce, by violation notice and/or towing, its own parking restrictions on its own property. Normally, the police will not direct the removal of a vehicle from private grounds unless it is abandoned, unlawfully parked, causing a safety hazard, blocking an entrance or driveway, or otherwise in violation of a County ordinance. Parking in violation of an association's parking rules is not unlawful or illegal.

Most condominiums and townhouse associations have very limited parking space and residents must sometimes park away from their homes. Complaints are common, and associations must study and discuss a variety of schemes and rules to identify and resolve the problems. Parking rules and restrictions is one subject that affects every

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member, and every member has a comment or objection. It is advisable to survey the full membership or publicize a general meeting to foster member comments and input and discussion before the board finalizes rules by policy adoption. Some typical methods include:

- require vehicles to be registered with the association and to display current license tags, safety/emissions inspection stickers, and County decals at all times. This ensures that spaces are used only by members, and not for the storage of vehicles;
- assign one parking space as close as possible to each unit. The Police Department suggests that actual unit numbers or addresses not be painted on the pavement or curb because an empty space would indicate that an owner may not be home. Remote spaces may be assigned and/or used on a first-come, first-served basis;

- designate guest spaces, not to be used by residents during designated hours.

Parking rules on association property must comply with the applicable state laws and the governing documents, i.e., an association may not be able to assign reserved parking if the documents state that "...parking is on a first-come, first- served basis." Similarly, assigning or reserving spaces on the association's common grounds must also be in concert with governing documents (see Chapter 2; Hierarchy of Documents (Order of Precedence); pg. 27). In a 1998, a townhouse association reserved two parking spaces on the common grounds for member townhouses that lacked a private garage and driveway, but reserved no spaces for those that had garages and driveways. Despite the apparent attempt to fairly provide for all members to have convenient, nearby parking spaces, those who were denied reserved spaces sued the association for violating the declaration that reserved the common area for the use and enjoyment of *every* member of the association "on a uniform, non-preferential basis." The Circuit Court granted the plaintiffs' motion, which was appealed to the Virginia Supreme Court. The Supreme Court affirmed the Circuit Court decision noting that the parking policy "[did] not treat the owners on a uniform, non-preferential basis."

Parking rules and regulations should be clearly written and documented in the association's policy resolutions, and well publicized so that all owners are aware of the requirements, restrictions, and the consequences of non-compliance. Enforcement is best initiated by placing a violation notice on the vehicle and/or sending a copy to the owner. Such notification is not required by state or County law but is a reasonable action on the part of the association. The notice should state the specific violation, request that the vehicle be removed by a specific date, and describe further actions such as towing at the owner's expense and/or an assessment of charges against the owner's property. If the violation continues, state and County Codes authorize towing of the vehicle, provided that the property is conspicuously posted with warning signs. Many associations restrict or prohibit the parking of trucks, commercial vehicles, boats, and sometimes recreational vehicles and trailers/campers. A community association may have a separate facility for such vehicles or suggest alternative parking arrangements such as:

- vehicle and boat storage facilities are available at the Regional Park authority's Pohick and Algonkian Park. Park headquarters at (703) 352-5900 or online at

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www.nvrpa.org has information about parking, however, there may be a waiting list; and

- some moving and storage firms have facilities for boats, recreational vehicles, etc. An association might negotiate a group rate if such a facility is convenient to the community and there are sufficient vehicles to be stored.

Towing From Private Property: - The Code of Fairfax County, Section 82-5-32, provides for the towing and storage of vehicles unlawfully parked and/or parked in violation of association rules and regulations on association property. Any such vehicle may be towed to a storage site, provided that the following conditions are met:

- the owner (or agent) must erect and maintain permanent sign(s) conspicuously posted at all entrances to the property, that notify anyone driving a vehicle onto the property that parking restrictions (thereon) are enforced by towing. The sign(s) must state or reasonably indicate i) "private property," ii) "reserved parking," "permits required," or other parking restriction message; iii) that a parking violation may result in towing; and iv) the words (entire phrase) "If towed, call (703) 691-2131" (or, in Herndon and Vienna, the appropriate police number).

- the association or its management agent must either expressly phone request the tow of a particular vehicle and sign a tow authorization slip (emphasis added), or have a contract or written agreement with a towing company.

- the tow operator must notify the Public Safety Communications Center to report the tow. (If a vehicle is removed from a location within the Towns of Herndon or Vienna, the towing operator must notify the police in that jurisdiction).

The towing of a private vehicle is an offensive, inconvenient and costly penalty for the owner, and should be considered and employed by the association only as a last resort. An association can expressly authorize the towing of a particular vehicle on a case-by-case basis. This method requires that the initial phone request be confirmed by the caller's signature before the vehicle leaves the property. This can be inconvenient and time consuming for the manager or individual resident, and may lead to confrontation with the vehicle owner. Unless specifically limited in writing, a towing contract gives unilateral authority to the tow truck operator to decide if a vehicle is abandoned, trespassing, improperly parked, or otherwise in violation of the rules without any other authorization or concurrence from the association. Further, towing of the vehicle itself removes all evidence of the alleged parking violation and reduces the situation to an argumentative "he said/she said" confrontation between the owner and the tow operator.

To minimize these problems and encourage compliance, associations should publish the adopted parking rules and regulations, and regularly remind its members (via newsletter or flyer) that the rules are enforced by towing. Similarly, associations should include the applicable parking rules and regulations along with prudent limitations and

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restrictions in the towing contract as guidance for the tow operators. Some associations restrict towing to certain hours, or to certain parking offenses, or require the tow operator to provide photo(s) of the parking offense, or otherwise limit the towing activity to the absolute minimum necessary. An association's parking rules and regulations can also be effectively enforced by "booting" which preserves the violation evidence without the inconvenience and cost of towing, or frequent damage to the vehicle. The County ordinance allows a maximum charge of $25 for the removal of a boot. This charge accrues to the association if its management agent does the booting.

Antennas – Over-The- Air-Reception-Devices (OTARD) Rule – The Telecommunications Act (the "Act") of 1996 was intended to promote the advancement of technology and competition among many new service providers, thereby allowing viewers the greatest possible access to the greatest variety of available programming at an affordable cost. In late 1996, the Federal Communications Commission (FCC) adopted the "Over-The-Air-Reception-Devices (OTARD) Rule." This rule addressed viewers' ability to receive video programming signals from: 1) television broadcast stations ("TVBS"), 2) direct broadcast satellites ("DBS"), and 3) multi-channel multipoint distribution (wireless cable) providers ("MMDS"). While allowing for some very limited controls and restrictions, notably for safety and historic preservation, the rule preempts all recorded covenants and restrictions that impair the installation, maintenance and use of antennas to receive video programming. The rule applies to all satellite dish antennas less than one meter (39.37") in diameter, to all broadcast TV antennas, and to antennas (one meter or less in diameter or diagonal measurement) for reception of wireless cable signals. The OTARD rule supercedes all restrictive covenants that:

- preclude, degrade, or interfere with the reception of an acceptable quality signal;
- unreasonably increase the cost of installation, maintenance or use of the antenna, and
- unreasonably delays or prevents the installation of the antenna.[21]

The OTARD rule was amended in January 1999 to apply to rental properties and homeowner and condominium associations where a tenant or resident has exclusive use of limited common elements such as a balcony or patio. It applies to all types of multiunit and manufactured (mobile) homes as well as to single family homes. Residents may install an antenna on a limited common element within their exclusive use as well as on property they own outright (i.e., a yard), but may be prohibited from installing an antenna on the common element roof of a multiunit building. A central antenna system installed on common elements by the association may allow restriction of the installation of individual video antennas, provided that:

[21] Federal Communications Commission FACT SHEET, Over-the-Air Reception Devices Rule, February 2001, page. 1, (online at: http://www.fcc.gov/mb/facts/otard.html).

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- the viewer receives the particular video programming service that he/she/they desire and could receive with an individual antenna (i.e., all DBS, TVBS and/or MMDS providers, not just any provider of the association's choice);

- the video reception from the central system (in the residence) is as good as or better than the quality received from an individual antenna;

- the costs associated with use of the central system are no greater than the costs of installation, maintenance and use of the individual's antenna; and

- the association's requirement to use the central system does not "unreasonably delay the viewer's ability to receive video programming."

With the installation of an acceptable central antenna system, an association can require the removal of individual antennas previously installed on limited common elements if the cost of removal and the value of the antenna are reimbursed to the individual.[22]

It is important to understand the technologies involved with the different antennas that are protected under the OTARD rule as well as the full intent, interpretation and application of the rule to prevent community conflict, or liability actions. For instance, broadcast signals can be received by "rabbit ears" or an attic-mounted antenna, however, a quality signal from such antennas can be degraded by the weather, a metal roof or siding, or interference from nearby appliances or transmitters (i.e., cordless phones). It is not acceptable for an association to say "...attic installation works well at one address in the association, therefore all broadcast antennas must be attic-installed." If a resident chooses to install an outside broadcast antenna for improved signal quality, it is the association's responsibility (and cost) to demonstrate that the signal quality is not improved (at that individual's property) before the application can be denied or restricted.

Satellite dish antennas must be installed outside the residence because they require an unobstructed, direct line-of-sight to receive a quality signal. If several locations on a specific property offer an unobstructed, quality signal, the association can require installation where it is least obtrusive as long as that location doesn't unreasonably increase the cost of installation, maintenance or use of the antenna. If the front yard is the only location on that property that receives a quality satellite signal and the owner chooses to proceed in that location, the installation cannot be restricted or prevented. It is also not acceptable to restrict antennas because "the whole community is served by a quality cable system." Because satellite does not carry most local programs, installation of both satellite dish and broadcast antenna (for local programming) cannot be restricted.

Association covenants or bylaws that simply prohibit antennas will certainly be overruled by the FCC regulations which take precedence over any conflicting restrictions; such covenants will become unlawful – and thus unenforceable.

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[22] Federal Communications Commission FACT SHEET, Over-the-Air Reception Devices Rule, February 2001, pg. 5 and 6 of 10 (online at: http://www.fcc.gov/mb/facts/otard.html).

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Associations will not have to amend their covenants to comply with the FCC regulations because compliance is already mandatory.[23] However, restrictions that do not impair a viewer's ability to receive video signals remain enforceable. Community associations can still require a resident to apply for approval of the antenna installation as long as no unreasonable delay or cost is involved. Associations can still require compliance with the rules regarding method of installation, and may require screening, unobtrusive placement, painting, camouflage and other reasonable steps to reduce the visual impact on the community.

There are possibly as many different scenarios and "what ifs" as there are associations in Fairfax County, and disputes over interpretations and applications of the rule have already arisen. If a viewer/member and the condo or homeowner association disagree on the applicability of an antenna restriction, either party may file a Petition for Declaratory Ruling with the FCC or a lawsuit in a court of competent jurisdiction. All parties to such dispute are encouraged to resolve disputes prior to filing a petition or litigation in court. Associations and individuals may call the FCC (888-225-5322) for information about how the rule works or applies in a particular situation. The FCC maintains a Fact Sheet on its website concerning the OTARD rule and includes frequently asked questions and answers that may help to resolve disputes and misunderstandings about antennas and an association's restrictions. The FCC Media Bureau Internet website is online at: http://www.fcc.gov.mb/ .

Law Enforcement Problems - Problems with traffic violations on private streets, trespassing and vandalism on common areas, and excessive noise are normal problems in community associations. The County Police Department is able to provide assistance in many such instances as described in general terms below. Information about specific problems or situations can be obtained from the Police Department. Each County police station has a Crime Prevention Officer who will work with an association to reduce traffic or crime problems. The Police suggest that associations designate a representative to contact the Police Department when problems occur on/in the common areas and facilities. Call your closest district police station for further information. (See "Neighborhood Watch" under Voluntary Programs in the next section of this manual).

The Police Department will patrol private streets. An association should contact the appropriate district police station to discuss methods of alleviating any ongoing problems. The Police do not routinely enforce traffic laws on private property (e.g., stop sign violations, speeding, etc.). State law does not require a motor vehicle accident investigation by the police if property damage (only) occurs on privately owned or controlled (association) property. An officer may respond to an accident to ensure the exchange of information between the parties involved, but the response may be limited (or ended) by other priority calls occurring at the same time. Accidents involving major violations such as reckless or drunk driving, hit-and-run, personal injury, or death will be investigated by the police, regardless of location.

The Police Department will respond to trespassing calls on commonly owned or controlled property if the area is posted with "No Trespassing" signs. If the trespasser is

[23] "Channel Surfing" by P. Michael Nagle; Common Ground, May/June 1996; pg. 33

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still present when the officer arrives, the property owner or association representative must, in the officer's presence, ask the person to leave. If the person does not leave, the officer can make an arrest. In cases of repeated trespassing by the same person, association members can petition the court to summon the individual to answer a charge of trespassing (Section 5-4-1 of the County Code). If the trespasser is no longer present when the police arrive, the person complaining must swear out a warrant regarding the violation. Under Virginia law, arrests cannot be made for misdemeanor violations unless the arresting officer has witnessed the violation or unless someone who has witnessed the incident has sworn out a violation warrant. An association may want to contact its attorney prior to swearing out any such warrant.

The Police Department will respond to complaints about noise disturbances under the County's Nuisance Noise Ordinance (Section 108-5-2 of the County Code). Typically this involves loud noises between the hours of 11 p.m. and 7 a.m., animals which are habitually noisy (such as a dog that constantly barks), or other noisy household activities. Noise problems are particularly troublesome in garden-type condominiums and townhouses because of the common walls or floors. Annoying noise sources can include TV's, stereo music, vacuums, dishwashers, home exercise equipment, pets, and movement of furniture or people on bare floors. The board of directors or management should remind residents that floors and walls seem "thinner" at night when ambient noise levels fall to a minimum. Also, one person's interpretation of "loud" may be quite different from that of another. Variables such as age, hearing ability, personalities, habits and attitudes are always at play in complaint situations. Upon arrival at a noise complaint location, an officer will request that the noise be abated. An arrest will be made or a warrant issued only if the police officer's request is not heeded. If the noise is no longer being made when the officer arrives, the Police Department will take no action unless two unrelated persons swear out a warrant for the alleged noise disturbance.

Special Events Planning[24] - A special event is an activity for which permits are required and where a significant number of persons participate in the activity. Examples are fundraisers for the association or other cause or charity; a parade, bike or foot race, or block party; a community garage or yard sale; a soapbox or bathtub derby; crafts or hobby shows, etc. Specific information and special conditions pertaining to special events are listed below by location or type of event. Some elements or special conditions listed may not apply to your specific event, however, these guidelines can help make planning the event easier, and the "big day" safer and more enjoyable for all who participate. Some events and activities require certain types of zoning permits or other licenses, such as a Temporary Special Permit, an Exhibitor's Permit for animals, or a Banquet License for alcohol. While some permits take less than 3 weeks to process, others require a public hearing that takes considerably longer. If your association is planning a special event, contact the Department of Planning and Zoning, Planning Division at (703) 324-1325 or online at http://www.fairfaxcounty.gov/dpz/contactdpz.htm .

[24] Michael LoMonaco, Fairfax County Citizen Guidelines for Special Event Planning, Fairfax County Police Department, Fairfax, VA, 1994; with assistance from Ronald Phillips, Department of Emergency Services, and John Fee, Federation of Citizens Associations; condensed and modified for this publication.

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Locations and Types of Special Events:

- **Public Schools** – Meetings or special events held at a Fairfax County Public School require an "Application for Community Use of School Facilities and Grounds" to be filed with the principal of the particular school at least 15 days before the event. Charges based upon the room size needed and how long it will be used must be paid at least 10 working days before the event. Unless the requirement is waived, an Internal Revenue Service tax exemption letter and proof of liability insurance coverage may be required. Alcohol and smoking are forbidden on school grounds at all times, and no tents are permitted. Call the Community Use Section of the County School Board at (703) 246-3873 for a fee schedule and other information. Fairfax County Community and Recreation Services has scheduling authority for athletic fields and gyms on school property. To reserve time and use of fields, contact Facility Scheduling at: http://www.fairfaxcounty.gov/rec/indexffxco.htm or call (703) 324-5533.

- **Park Facilities** – If you desire to hold a community event at a Fairfax County Park Authority facility for the gathering of 75 or more individuals, you will need to complete a "Public Gathering Permit", which is required to reserve any picnic area or pavilion. The fees for reserving picnic areas and pavilions vary. For permit packages and information, contact the Fairfax County Park Authority at (703) 324-8700, or at http://www.fairfaxcounty.gov/parks/parks.htm. Fairfax County Community and Recreation Services has scheduling authority for athletic fields on parklands. To reserve use of fields, contact Facility Scheduling at (703) 324-5533 or at: http://www.fairfaxcounty.gov/rec/indexffxco.htm. Bull Run Regional Park, Pohick Regional Park, the W&OD Trail, golf courses, boating, and other park facilities are run by the Northern Virginia Regional Park Authority (NVRPA). Contact NVRPA at (703) 352-5900 or at www.nvrpa.org for use rates and regulations regarding group events. For information regarding Virginia State Parks, call (804) 786-1712, or at: http://www.dcr.state.va.us/parks/index.htm; and for National Park Service (NPS) information, call (202) 619-7222, or online at http://www.nps.gov .

- **Road Uses and Closings; Parades, Garage Sales, Block Parties, Foot or Bicycle Street Racing** – Many communities hold special events such as neighborhood parties, garage sales and parades within the subdivision. Because permits may be required from several agencies, event planners should prepare a fact sheet for the event with the name of the organization and contact person's name, address and phone number. Also describe what the event will be, the event date and hours, the location, required equipment, funds, parking, maps, and clean-up plans. Make photocopies of documents such as the IRS tax exemption letter and insurance binder to facilitate the approval process and help obtain permit fee waivers.

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Some associations sponsor distance foot races or bicycle road and trail races elsewhere in the County or the state. VDOT is responsible for nearly all primary and secondary roads in Fairfax County, however, the Police and Fire and Rescue Departments can offer safety tips and advice. VDOT requires a "Road Use Permit" to be submitted and approved in advance of any activity on a state road. The permit is available at local police district stations or from the VDOT Northern Virginia District Office at 14685 Avion Parkway, Chantilly, Virginia 20151-1104 (tel. (703) 383-8368 or (703) 383-2888). The VDOT Internet homepage at www.virginiadot.org contains a "Bicycling" link to many sponsored events and other cycling information, however, the "Road Use Permit" is not available online.

- **County Government Center** – Local nonprofit groups are encouraged to use the facilities and grounds of the County Government Center for educational, cultural, and informational purposes. The County Government Center features a 375-seat Board Auditorium, a 10-room Conference Center (total capacity 300), an interior Public Forum, and hallway atriums that are well-suited for displays, craft shows, and bake sales. There are 1,500 outside parking spaces. Reservations for the County Government Center facilities on a "first reserved" basis are made by calling the Building Management Office (703) 324-2055 from 8 a.m. to 4:30 p.m. weekdays. Applications must be submitted at least 10 days prior to the proposed activity, and sponsors must complete a work order describing the room setup and any requested equipment. Catering is available from the cafeteria (703) 324-2979, but alcoholic beverages are prohibited unless approved by the County Executive.

- **Music, Arts and Crafts Shows** – Promoters sponsoring special events such as rock concerts, craft shows, and hobby fairs for large audiences must acquire a Business Professional and Occupational License and submit a roster of expected participants. The Fairfax County Code requires the promoter of such shows or individual peddlers to apply in person to obtain a license from the Consumer Protection Division (CPD). Associations sponsoring such type of special event should call CPD (703) 222-8435 to determine if a peddlers license is required for their show or event.

Special Considerations: The following special considerations are a necessary part of the event planning as they may be applicable and/or required depending upon the size, nature and location of the special event:

- **Police** – If large numbers of people or traffic problems are anticipated, notify the District Police Station that serves the area where the event will be held. If you wish to hire off-duty Fairfax County Police Officers for the event, a form for this purpose is available at the District Station. Off-duty officers are generally prohibited from working events where alcohol will be served.

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- **Health** – Contact the Health Department at (703) 246-2444 or online at: http://www.fairfaxcounty.gov/service/hd/ hdweb.htm if food vendors are planned; at (703) 246-2541) if open fires are needed; and at (703) 246-2201 if sanitation and potable water are planned. If the event is away from public toilets or association facilities, plan on at least one portable toilet per 100 people to be at the event. On-site inspections by the Health Department may be required.

- **Fire and Rescue** – Events that may draw significant numbers of people should be coordinated with the Fairfax County Fire and Rescue Inspections Division at (703) 246-4849, or at http://www.fairfaxcounty.gov/ps/FR/homepage.htm. Contact the Fire and Rescue EMS Operations at (703) 246-2549 to request assistance with medical concerns.

- **Tents** – Tents are temporary structures requiring a building permit ($56 fee) if they are greater than 120 square feet (11' x 11'). Call the Department of Public works and Environmental Services (DPWES) Permit Application Center at (703) 222-0801, or at http://www.fairfaxcounty.gov/dpwes/construction/permits.htm . Tents are not permitted on school grounds. Event sponsors must submit an application and an affidavit as to the tent material's combustibility and evidence that adequate sanitary facilities are available. For tents greater than 250 square feet, the Division of Design Review (703) 324-1720 must determine if a site plan is required. Tents (and air support structures) covering more than 900 square feet and intended for more than 50 people also require a separate tent permit from the Fire Prevention Division of the Fire and Rescue Department (703) 246-4800.

- **Temporary Electric Power** – Electric permits are necessary for temporary electric service from existing power service and when using a portable generator as a central power supply. Contact the Permit Application Center (703) 222-0801, or online at http://www.fairfaxcounty.gov/dpwes/construction/permits.htm for application requirements and a fee schedule.

- **Amusement Rides** – An Amusement Device Permit is required for commercial amusement rides that may be contracted for an association's special event. Permit fees range from $15 to $45 depending on the type of ride and must be submitted with the completed application. Applications are available from DPWES at (703) 222-0801 or at: http://www.fairfaxcounty.gov/dpwes/construction/permits.htm .

- **Animal Exhibits** – The owners or operators of animals to be used at a special event (e.g., pony rides), are required to contact the Department of Animal Control (703) 830-3310 or at http://www.fairfaxcounty.gov/ps/ac/homepage.htm to schedule an inspection of the animals prior to the event. If the owners or operators of animals do not have their principal place of business in Fairfax County, an Exhibitor's Permit is required. A permit application is available from and must be submitted with a $50 permit fee to the Fairfax County Department of Animal Control. The animals will be inspected and the permit issued on the day of the event.

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- **License** – Vendors who are engaged in business in Fairfax County and who meet the requirements of the Fairfax County Code must acquire a Business Professional and Occupational License (BPOL) from the Department of Tax Administration at (703) 222-8234, or at http://www.fairfaxcounty.gov/dta/homepage.htm. Promoters sponsoring special events such as rock concerts or craft fairs for large audiences must also acquire a Business Professional and Occupational License and submit a roster of expected participants. Circuses, carnivals, and other similar temporary activities must acquire a County Revenue license, also from the Fairfax County Department of Tax Administration.

- **Beer, Wine, and Spirits** – If you plan to sell or serve beer, wine, or mixed drinks at a community event, you must file "Instructions and Application for Banquet License," obtained from the Virginia Department of Alcohol Beverage Control at (804) 213-4400, or at http://www.abc.state.va.us/enforce/forms/enfforms.htm. This permit, which has a processing fee and license tax of $45 for a single day ($30 for additional days), is issued to nonprofit corporations or associations holding athletic, charitable, civic, educational, political, or religious events, the proceeds of which must be donated to charitable organizations and not for personal monetary gain. Application processing normally takes seven business days. Off-duty Fairfax County Police Officers are generally prohibited from working at such events. (Guidelines for regulating safe consumption at special events are available from ABC and some national breweries). Alcoholic beverages are prohibited at outdoor park facilities, at Regional Park Authority facilities, and on all school properties.

- **Public Roads** – Although the Virginia Department of Transportation (VDOT) is responsible for most roads in Fairfax County, persons who want authorization for road use must submit an "Application for Road Use" to Fairfax County Police 30 calendar days prior to the event. The form should be taken to the Traffic Division or the District Station in the event area. When the Police Department completes the form, the applicant must submit it, at least 12 calendar days prior to the event, to VDOT Permit Section, 3565 Chain Bridge Road, (703) 359-1271), or at http://virginiadot.org/quick/nova_quick.asp. The application should include a map of the roads or areas to be traveled or used.

Special Events Clearinghouse: The Fairfax County Office of Public Affairs maintains a clearinghouse to help all organizations coordinate the scheduling of all prospective events that could draw from the same audience or conflict in other ways. Sponsors of major events and activities should contact the Office of Public Affairs Citizens Assistance Desk at (703) 324-3185, TDD (703) 324-2935 to list the event or to learn of other scheduled activities on or about a specific date. Please provide a contact person's name and phone number together with your association or organization name when listing your planned activity, and specify that the information is for the major events clearinghouse.

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SPECIAL EVENT PLANNING
TELEPHONE CONTACTS

SAFETY

Emergency Medical Services (Fire and Rescue Department) ..... (703) 246-2549
Food Vendors (Health Department).....(703) 246-2444
Inspections (Fire and Rescue Department).....(703) 246-4849
Open Fires (Health Department).....(703) 246-2541
Sanitation/Water Supply (Health Department).....(703) 246-2201
Traffic (Police Department, Traffic Division).....(703) 280-0550

FACILITY SCHEDULING

County Government Center, Building Management Office.....(703) 324-2055
County Park Facilities (Park Authority).....(703) 324-8700
Northern Virginia Park Authority Facilities.....(703) 352-5900
Playing Fields and School Gymnasiums,
Department of Community and Recreation Services.....(703) 324-5533
Public Schools, Community Use Section.....(703) 246-3873

PERMITS and LICENSES

Amusement Rides, DPWES Permit Branch.....(703) 324-1559
Animal Exhibits; Animal Control Division.....(703) 830-3310
Beer, Wine, Spirits; Virginia Department of ABC.....(703) 518-8090
Business Professional and Occupation License; Circuses, Carnivals and
Similar Activities; Arts and Craft Shows, Music/Rock Concerts;
Department of Tax Administration.....(703) 222-8234
Department of Cable Communications and Consumer Protection.....(703) 222-8435
Noise, Waivers; Zoning Enforcement Branch.....(703) 324-1300
Road-Use; VDOT, Permit Branch.....(703) 359-1271
Temporary Zoning; Zoning, Permit Branch.....(703) 324-1359
Temporary Electric Power; DPWES, Permit Branch.....(703) 222-0801
Tents; DPWES, Permit Branch.....(703) 222-0801
Fire and Rescue Department, Fire Prevention Division.....(703) 246-4800

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Volunteer Programs:

In addition to requirements of the governing documents and bylaws, associations can focus human resources of the community on programs, events, and activities that support and enhance the social and physical environment of the community. Support, participation, and promotion of these activities fosters a sense of community among the residents, and is in harmony and in keeping with the overall purpose of the association. Voluntary involvement can originate with individual residents, the association directors, committees, or from outside organizations. In some instances, program planning, training and organization already exists in the sponsor organization and needs only an invitation from the community association. The following are a few examples:

- Neighborhood Watch – Neighborhood watch is a proven, highly successful, community crime prevention program that functions through the cooperative involvement of police and citizens. The objective of "Neighborhood Watch" is to organize and train residents to be alert to potential crimes, unusual activities, and to suspicious persons and vehicles in their neighborhoods. The program is designed to prevent, detect and report crimes, with enforcement action left to the Police Department. Locally, the Crime Prevention Division of the Fairfax County Police Department sponsors this program.

  Population growth and its corresponding commercial and residential expansions are often accompanied by an increased potential for crime. New neighborhoods and developments with an influx of unacquainted and diverse residents are particularly vulnerable to theft, burglary, assault, property damage, and other criminal activities. At the same time, police manpower and economic resources are increasingly stretched thin. The adage that "an ounce of prevention is worth a pound of cure" was never more true or applicable than in this time and social environment. Support and promotion of this program is the "ounce of prevention" that can directly involve residents through participation. Alertness, observation and reporting by residents enables the police to provide prompt response and investigation of a suspicious incident, often before a crime is committed. This approach increases neighborhood security through awareness of crime, encourages neighborliness, creates involvement and interaction among residents, serves as a warning to potential criminals, and it helps to prevent crime or problems from arising within association boundaries. Security and property protection accrue to the residents, their homes and property, and to Condo/HOA facilities. A well-established and effective crime prevention program will help to maintain property values. The following "Neighborhood Watch" programs can be implemented individually or collectively, depending upon the characteristics, resources, and needs of each community:

  - Passive Observation – constant lookout by all residents for suspicious or unusual activities or persons in the neighborhood, and awareness of the program and reporting procedures.

  - Window Watch – A scheduled, routine activity where reliable residents who may be house-bound for reasons of health, age, disability, parenthood, or a care-giver in the home observe exterior areas every 15 to 20 minutes

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- Walking Patrols – Active scheduled walking patrols by pairs (only) of residents, within a several block area looking for suspicious activities, persons or conditions. Members should contact the police by radio or telephone.

- Mobile Patrols – Normally used during high crime hours or periods in larger communities and where homes are spaced apart making window watch or foot patrols impractical. Vehicle decals can make patrol activity highly visible.

Additional information regarding the police community services is available at http://www.fairfaxcounty.gov/ps/police/cmty_pol.htm. For further information about the "Neighborhood Watch" program, contact the Crime Prevention Division of the Fairfax County Police District Station serving the area where your condominium or homeowners association is located.

- Adopt-A-Park / Adopt-A-Field – These volunteer programs are a cooperative venture between the Fairfax County Park Authority (FCPA) and interested individuals and organizations that assume limited maintenance responsibility for designated park areas or athletic fields. These programs offer a unique opportunity for a residential association to help preserve and maintain the environment and recreation facilities near the community. Stream valleys are greenways, environmental corridors, stormwater floodplains, buffers from nearby roads and/or other developments, natural wildlife habitat, and linear parks for aesthetic and recreational enjoyment of all residents.

  While some parcels in these stream valleys are association open space, significant portions are owned by the FCPA as parkland and include much of the Countywide Trail system. Many other parks, play fields, and recreation facilities adjacent to residential developments provide safe pedestrian access for the benefit of the association members. Maintenance and preservation of these lands and facilities are critically important for the safety and enjoyment of all users, regardless of ownership. This preservation includes informing residents of rules and regulations prohibiting environmentally harmful activities such as dumping yard wastes, cutting firewood, removal of vegetation or soil, or changing the course of streams and surface drainage. The Park Authority created the Adopt-A-Park and Adopt-A-Field programs to meet maintenance needs and a strong volunteer desire by many residents and organizations. In reality, these programs are maintenance agreements that specify and limit the work to be performed by the participant(s). The Park Authority's professional staff is available to provide information, expertise, and supervision if needed. Further information about the Adopt-A-Park and Adopt-A-Field programs is available from the Park Authority Park Operations Division at (703) 324-8700, or online at http://www.fairfaxcounty.gov/parks/volunteer.htm.

- Fairfax Releaf - Fairfax ReLeaf is a nonprofit organization affiliated with the American Forestry Association and is dedicated to promote the planting of trees in Fairfax County and surrounding areas. This effort depends upon the voluntary support and participation of state and local organizations and other interested groups. The primary mission of Fairfax ReLeaf is to maintain the county's forest cover at or above

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that which existed in 1990 by replacing aged, diseased, and cleared trees, and by promoting proper tree care and maintenance through volunteer activities.

Fairfax forests play a vital environmental role by providing wildlife habitat, watershed protection, climate modification, noise abatement, visual buffers and dividers between developments, improved air quality, shade for energy conservation, recreation qualities, and increased land values. Many developments involve extensive clearing of forested land during construction, thereby depleting the forest cover. This rapid decline in forest cover creates a critical need for replanting throughout our communities. While landscape planting is a typical part of development plans, it does not begin to replace the lost vegetation. Studies show that only one tree is replaced for every four trees removed in urban and suburban developments. New trees require many years of growth to provide the benefits of maturity. Association "Open space" areas are often sub- parcels of cleared land that are too small for active play fields or other use, yet require maintenance at association expense. The planting of trees (seedlings) in these areas will help to restore lost tree cover, and eventually provide the aesthetic and environmental benefits of forested land while reducing or eliminating maintenance expenses.

A residential association can coordinate the interests and human resources of the community by promoting a tree planting program for community open space parcels. In most cases, Fairfax ReLeaf provides the tree seedlings, expertise, and supervision, while the association provides the area to be planted, the manpower, and continuing care of the seedlings. For more information, contact the Fairfax ReLeaf office at (703) 324-1409, or at http://www.fairfaxcounty.gov/DPWES/environmental/ecp.htm.

- Adopt-A-Highway – "Adopt-A-Highway" is a national award winning litter and trash removal program administered by the local residency offices of the Virginia Department of transportation (VDOT). Through this program, interested groups and organizations are safety-trained and permitted to conduct trash/litter removal from the roadsides of a state maintained highway. In most cases, an organization is responsible for a two mile length of roadway roadsides only). Training, scheduling and collection activity are coordinated through VDOT which supplies safety vests, warning signs, trash bags, and collection pickup if necessary. VDOT also provides and installs permanent identity signs on the roadside naming the organization and the Adopt-A- Highway program as being responsible for the trash and litter control.

The first impression of a residential development is usually as seen from the perimeter road or highway. Many developments have entranceways or gates into the development to create a favorable impression and identity for residents and visitors. This impression and identity can be jeopardized if the perimeter roadsides are trashy, littered and unkempt. The Adopt-A-Highway program is an excellent way for residents to promote community beautification by extending their maintenance concerns to the exterior roadsides of the community. The participants are required to schedule at least four collection activities per year, whereas state maintenance might collect litter only once each year. No mowing or other maintenance is authorized or permitted by VDOT.

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Further information about the program is available by contacting the Adopt-A-Highway Coordinator, VDOT-Fairfax Residency office at (703) 359-1271, or online at http://www.virginiadot.org/infoservice/prog-aah-faqs.asp .

- Gypsy Moth Suppression: - Fairfax County participates in the Virginia Cooperative Gypsy Moth Suppression Program, which is supported by federal and state funding. Gypsy Moths feed on the leaves of hardwood trees, and in large numbers can defoliate and kill major stands of trees. This, in turn, reduces property values. Gypsy Moth populations throughout Fairfax County are on the rise. The 1995 aerial treatment in the County covered approximately 45,000 acres, with a maximum ground treatment of some 200 additional acres. The suppression program ensures that all known Gypsy Moth infestations of 250+ egg masses per acre will be treated. The summertime treatment program minimizes tree defoliation and mortality, provides for maximum infestation suppression the following spring, and should meet all citizens' needs regarding Gypsy Moth suppression.

  The aerial treatment program is voluntary. Citizens may choose not to take part in the aerial program and a 200-foot buffer zone will be created around the non-participants' property. This buffer zone will be treated with ground spray. Citizens living in an area scheduled for aerial treatment are notified of the treatment schedule. Maps of the spray areas are displayed at government centers and County libraries, and public meetings provide additional information and answer citizens' questions. The County continues to offer public education and technical assistance to communities wishing to be more active in fighting the infestation and has purchased 100,000 pieces of burlap banding for citizens to wrap around tree trunks on their properties. Banding interrupts the life cycle of the Gypsy Moth by preventing the larvae from reaching the tree foliage. Call the Department of Public Works and Environmental Services Gypsy Moth Office at (703) 324-5304, or online at http://www.fairfaxcounty.gov/dpwes/environmental/pests.htm .

- Adopt-A-Stream - Fairfax County residents are fortunate in having many scenic streams available for passive recreational use and enjoyment. These streams and their natural floodplains are protected from the encroachment of adjacent developments by County ordinances, zoning regulations, and adopted policies. In many locations, maintained countywide trails provide easy access into and through these natural, scenic, linear parks and environmental quality corridors. Many County residents routinely enjoy active and passive recreational pursuits along these stream valley trails. Unfortunately, the health of these streams and environmental corridors cannot be assured solely by ordinances, zoning regulations, and adopted policies. Streams are among the first collection points of surface and groundwater runoff from very large watershed areas that include roads and parking areas, residential and commercial developments, trash dumps, landfills, and other sources of pollution. While some pollution within the watersheds can be stopped at or near its source by implementing County construction standards, other thoughtless or inadvertent, and occasionally intentional acts pollute the land, the streams, the bays and the oceans. The health of the stream valley environment can directly affect the health of its users.

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Many problems such as sewer overflow and failing septic systems are obvious. However, less obvious situations such as over-fertilization of yards, gardens and farms; disposal of waste oil, lubricants, chemicals and cleaners; illegal dumping of trash and residential or commercial waste materials; and illegal discarding of hazardous wastes and chemicals can cause unknown long term contamination problems. These contaminants are a direct threat not only to the human population, but to the wildlife and vegetation that make the environmental quality corridors a significant benefit to the visual and economic values of the County land base. In 1987, the Fairfax County Environmental Quality Advisory Council (EQAC) tasked the Health Department to alert the public to potential health hazards associated with the recreational use of stream waters and to adopt and implement a standard operating procedure for determining the source of contaminants found in streams through existing surveillance programs. The objectives of this task are four-fold:

- increase public awareness of stream health hazards through citizen involvement and participation;

- develop information for continuing public education to stream health hazards;

- provide a central contact point for stream complaints, questions and comments; and,

- increase stream surveillance for pollution without increasing existing staff.

The Adopt-A-Stream awareness program, developed by the Environmental Services Section of the County Health Department and introduced to residents in 1989, is one result of the EQAC challenge. Through membership application in this program, individuals or groups can adopt a section of a stream for observation, monitoring, reporting, and clean-up activities. The Health Department provides printed technical information, detailed maps, a newsletter, video and speaker programs and additional information and assistance to help members care for "their stream", and to investigate pollution and contamination reports to determine the source and cause of the pollution.

The results of the County Adopt-A-Stream program have been substantial. Many individuals and groups including Boy and Girl Scouts, civic organizations, homeowner associations, high school and elementary science classes, and other participants have been instrumental in reporting pollution problems and cleaning many hundreds of pounds of trash and debris from their adopted streams. Identification of this program as the contact point for stream complaints has reduced the amount of time spent reporting problems. Stream pollution investigations by the Health Department have increased, resulting in quicker response, identification of underground spills, and court action when needed. Much of this would not take place without citizen involvement in reporting and identifying stream problems. The significant benefits of the Adopt-A-Stream program are summarized as follows:

- increased public awareness of health hazards of open bodies of water;

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- development of a standard procedure to determine sources of contamination;
- citizen participation in the protection of the environment and natural resources;
- provision of extra surveillance for possible and actual pollution incidents; and,
- centralized contact point for citizen complaints, questions and referrals.

This program can coordinate with the Park Authority's stream valley programs, and homeowner association involvement can make a substantial impact on community values, environmental quality, and land maintenance. For more about the Adopt-A-Stream Program, contact the Health Department, Environmental Services Section online at http://www.fairfaxcounty.gov/service/hd/resourcewater.htm or call (703) 246-2201.

- NVSWCD "Earth Team" - The Northern Virginia Soil and Water Conservation District (NVSWCD) promotes the wise use and conservation of soil and water resources and sound environmental policies for Fairfax County, and offers technical expertise, educational programs, and community outreach in the soil and water conservation arena. NVSWCD has numerous volunteer opportunities for individuals and groups through its "Earth Team" program. The Earth Team is a volunteer arm of the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). Members of the Earth Team work in partnership with NRCS and Soil and Water Conservation Districts to conduct both individual and group projects. By working together, NRCS, NVSWCD, individuals and groups can expand conservation efforts and better serve the community. As a member of the Earth Team, citizens become involved in conservation activities by:

  - reporting and preventing erosion and reducing non-point source pollution;
  - conserving water and helping to clear streams of debris, trash and blockages;
  - enhancing wildlife habitats and pride in our County's natural resource heritage.

  Members of the Earth Team may volunteer for clerical, public information, technical, education and outreach positions. Possible Earth Team projects in and near residential association communities include stream clean-up, tree planting, teaching youth group and school programs about watersheds and water quality, taking photographs and writing articles about conservation issues, organizing conservation tours and exhibits, and general office support. Contact the Northern Virginia Soil and Water Conservation District at (703) 324-1460, or at http://www.fairfaxcounty.gov/nvswcd/default.htm.

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SECTION II: OPERATIONS AND FINANCE
Chapter 4 - BUDGET

An association must have sufficient funds to cover the costs of properly maintaining the common areas and facilities, planning for future growth needs of the community, and carrying out its administrative and other responsibilities. A budget estimates these costs and, at its most elementary level, is used to balance income and expenditures to guard against overspending. A budget is also a planning tool to achieve the objectives and priorities of an association and to plan for its likely expenses on an annual and multi-year basis. It assures association members that their assessments are justified and that the money is wisely spent for both the needs and desires of the association. This chapter discusses the factors to consider when preparing a budget; e.g., the association income and expenses, facility and equipment inventories, and the establishment of reserves for general operations and capital projects.

Much of the maintenance and services provided by an association are required by its documents. Frequently, however, an association has discretion over the level of service or maintenance provided; e.g., it can maintain its lawns to give a "country club" look, or it can maintain them at a "neat and presentable" level. Many associations also provide optional services such as social, educational and sports programs, the number and extent of which depends on the desires and participation of the association members. The board of directors is ultimately responsible for fiscal management, making sure that the association's obligations are adequately fulfilled, and that proper value in service is received for each expenditure.

The process of drawing up a budget is an opportunity to evaluate the quality and quantity of the services provided and to determine whether they should be maintained, upgraded, reduced, or eliminated. It is also an opportunity to reflect owners' needs, preferences and priorities. To accomplish this, an association can perform resident surveys, have its committees hold meetings or hearings to discuss the committee's area of responsibility, or hold a general budget hearing for comment on the entire proposed budget. Even if the budget is not subject to member approval, a budget hearing can provide the board an opportunity to inform owners of the needs of the association, the reasons for budgeted items, and how budget figures are derived.

Budget Preparation:

The time required for preparation of an annual budget depends upon the variety of services provided by the association and the number of persons who are involved in the preparation process. Regardless of whether the budget is prepared by the treasurer, manager, finance committee or a cooperative effort of all, the association should establish a budget schedule and provide general directions to guide the preparers. A budget schedule can be established by working backward from the date the association's new fiscal year begins and allowing time for committee work, budget hearings, final approval of the budget and proper notice to members of the annual assessment. Seldom will an association begin preparation of an annual budget without background materials to work with. The previous year's budget, existing contracts, bills and vouchers, a set of books showing income and expenditures, and financial statements will help to formulate a budget for the upcoming year. The association must

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determine the mandatory responsibilities that result in the expenditure of funds, its authority to spend funds for non-mandatory activities, and any limitations placed on the association in establishing assessment levels.

Project Inventory - If an association does not have a detailed inventory of all land, facilities and improvements in the community, an inventory should be prepared that lists the area of common grounds parcels and facilities and/or improvements thereon. A site plan can be obtained from the Department of Public Works and Environmental Services Plan Control Section at (703) 324-1810, and the square footage of lawn, sidewalk, streets, and facilities can be measured and calculated. Preparation of an inventory is time consuming but just once is usually sufficient to provide the association with accurate data to use in estimating budget-related expenses. Sample inventory work sheets are included at the end of this chapter to assist in determining maintenance needs and responsibilities of the association.

An inventory of equipment, furniture and other association property should also be made, including the age, cost, condition and supplier of each item, and all current warranties and guarantees. This is necessary to determine insurance needs and asset values. Once the association identifies its maintenance and service responsibilities and its property and equipment condition, it is in a better position to budget the expenses that are likely to be incurred in operating the association for the coming term.

Income - An association's principal source of income is the assessments paid by the owners. Other miscellaneous income sources may include: fees for late payment of assessments, guest fees for use of recreational facilities, newsletter advertising, vending machine profits, profits from social functions, interest on reserve funds, etc. If interest income on reserves is dedicated to the reserve funds, and advertising income from a newsletter is used exclusively to offset the cost of producing it, these revenues need not be considered income for budget purposes. If other sources of income are reasonably stable, they can be included in the association's income projection for the coming year.

When anticipated expenses are known, the income that must be obtained from assessments can be determined. If additional income is needed, the budget should be reviewed to make certain nothing can be cut prior to levying an assessment increase. If assessment income exceeds the budget requirements, the budget should be examined to make sure all expenses are included and that reserve funds are properly allocated. An association experiencing a pattern of uncollectible assessments may want to add a factor to ensure coverage of budgeted expenses. It is desirable to eliminate or reduce, rather than tolerate, uncollectible assessments; but the budget should reflect that they exist. An association's documents usually establish the initial assessment for each unit based on the developer's projected expenses for maintaining the common areas and managing the association. It may be advisable to work with the developer to set the amount at a level appropriate for the owners after they take control of the association. Additionally, the documents will outline the basis on which the amount of the assessment on each unit is determined, the amounts by which the assessment can be increased each year without a

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vote of the members, the procedures to be used to increase the assessment above this amount if necessary, and the procedures for notifying the owners of the amount of the assessment. In some associations, the documents prohibit assessment increases above a specific amount, while others are limited by a maximum percentage increase. In either situation, an association may want to amend the documents to permit raising sufficient funds for satisfactory operation of the association.

Expenses - Chapter 5 discusses the expenses most frequently incurred by community associations. Regardless of who prepares the expense section(s) of the budget, it is important that each proposed expenditure reflects a comparison with past budgets. This should include a review of bills, contracts and vouchers related to the budget item, particularly where renewals are set for a time during the budget year. The effects of inflation on labor and materials should also be considered as well as the effects of any proposed change in the level or frequency of a service. Some changes may be unanticipated, such as increases in governmental service fees or charges, or unusually high utility expenses. Operating reserves are set in the budget to handle these as discussed in more detail in the section on reserves. Proposed physical improvements, reserve fund expenditures or other discretionary spending should be listed in a separate section of the budget.

Budget Format - An association's budget reflects the number and types of services it provides, and the format of the budget should be tailored to meet each association's needs. The two most common types of budgets are line item budgets and program budgets. A line-item budget lists expenses by type; i.e., salaries, supplies, etc. Associations with few administrative and maintenance costs may find that a simple line-item budget listing income, expenses, and reserves fulfills its budget needs. A program budget lists expenses according to the purpose for which they are incurred (e.g., administration, maintenance, playground operation) and reflects the cost of a service or facility more accurately than a line-item budget, because it shows all expenses associated with each service or facility. Associations that provide many types of services may find it advantageous to use a program budget or modified program budget to list its expenses. A program budget uses expense categories to list related expenses in detail. Normally these categories are also used to designate expenses in all of an association's record keeping.

Financial management of homeowners' and condominium associations almost always utilizes some combination (or all) of the following expense categories: 1) administrative-management fees, office supplies, furniture, computer systems, taxes, and insurance; 2) operating expenses- land services and grounds maintenance, snow removal, property inspections, reserves, swimming pools, community centers, and community programs, painting, and maintaining recreational facilities; 3) unit services- utilities, trash collection, unit reserves newsletter and/or other communications. The Financial and Accounting Guide for Non-Profit Organizations (see Bibliography) and other publications as well as knowledgeable and experienced accountants are available to assist

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with the development of a thorough and comprehensive budget format customized for an association's specific needs. When presenting a budget to the members of an association for preliminary information and input or for approval, it can be helpful to break out the items in the budget by cost per unit per month or quarter to show members exactly how their money is being spent. It is also advisable to include explanatory notes or a commentary with the budget to let members know how various figures were derived.

Capital Reserves - One of the major financial responsibilities of an association is the establishment of reserve funds to cover the cost of anticipated renovations, major repairs, and replacements for capital facilities. Reserves are generally included in the budget as an expense item. The documents of many associations, particularly for condominium developments, require that reserves be established and maintained for the repair and replacement of association facilities that have a life expectancy less than the buildings (i.e., roofs, heating/cooling systems, streets, swimming pools, etc.). Various mortgage-lending institutions require that reserves be established and maintained. Failure to establish reserves may require that an association must drastically increase its annual assessment, levy a special assessment, borrow money, or just not repair (often not an option) when faced with the expense of a major repair.

It is not unusual for an association to have difficulty convincing its members of the need for accumulating adequate reserve funds. In transient areas, members who do not expect to live in the community for an extended period are often opposed to funding improvements from which they are not likely to benefit. It can be shown that established reserve funds assist owners in selling their homes by providing evidence that prospective purchasers will not have to bear the primary costs for the replacement of common facilities they did not help wear out. One of the major problems in establishing and maintaining reserves is determining the amount that should be set aside to provide for future expenses. While it is impossible to know specifically the nature, extent and timing of replacement or major repairs for various items, general guidelines can be established which reflect the major expenses that can be anticipated by a facility over its lifetime. Contact with contractors and manufacturers can provide an idea of the costs associated with these anticipated repairs which can be used until experience provides more accurate data.

A generally accepted way to establish reserves is to determine the replacement or renovation costs of each major association facility or improvement (including a cost inflation factor), divided by the number of years until the replacement or renovation is expected, and set that amount aside each year. An association may also contract with an architect/engineering firm for a repair/renovation study of association facilities, and to include a projected schedule of repairs and renovations and estimated costs. If permitted by the documents, the board of directors might invest accumulated reserves in a long-term growth investment with greater earning power than a savings account. In this case, the board should seek professional advice and be fully aware of the investment risks to the association's funds.

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In addition to eventual replacement or renovation, some facilities will require major maintenance during their useful life. Reserves should also be set aside for these expenses. For example, while reserve funds for a tennis court are often based on the cost of renovating the court after 20-25 years, a major expense for resurfacing and repainting the court will be incurred every 6-8 years. If this expense is not included as an operating expense and these expenditures are deducted from the renovation reserve, sufficient funds will not be available to cover the renovation when it is needed.

In 2002, the Virginia General Assembly enacted amendments to the Property Owners Association Act and the Condominium Act that requires every association to conduct a reserve study at least once every five years, and to review the most recent study at least every year. The purpose of these requirements is to force the respective boards to stay current with their association's real maintenance and replacement needs and costs, and to prevent falling behind and requiring a special assessment to cover their negligence. Inflation increases all costs but material costs often increase more rapidly than the rate of inflation (e.g., petroleum-based materials fluctuate more closely with crude oil prices on the world market than with the local economy). The anticipated time frame for major repairs can also change with mild or severe weather, the effects of proper maintenance or no maintenance, or variations in the use of a facility that may cause a change in its life cycle. The manner in which reserve funds are established and funded can make a big difference in an association's income tax liability, and should be discussed with an attorney or accountant. Some associations require that reserves be kept in a federally insured institution to limit their use for investment purposes. The placement of reserves for maximum interest or return on investment with minimal loss exposure should be thoroughly discussed by the board.

General Operating Reserves - A general operating reserve, often called a contingency reserve, should be built into the annual budget to cover unanticipated operating expenses and repairs. Older associations and conversion condominiums may find that a larger contingency reserve is necessary than is sufficient for newer constructions. Two to three percent of the operating budget is a typical amount reserved. Unexpended funds from a given year might be added to the association's capital reserve, or be used to reduce the following year's operating reserve.

Special Assessments - Occasionally, expenses cannot be met with normal assessment income and a special assessment must be collected. Special assessments must be allocated to a specific expenditure such as the repair and construction of a capital improvement, if such cost is not already covered by reserve funds. The Virginia Property Owners' Association Act provides the authority to associations to levy special assessments "...to be used primarily for the upkeep and maintenance, including capital expenditures, of the common area." Association officers should be aware of the information on Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) at the end of Chapter 5, and Directors and Officers Liability in Chapter 6. For most associations, ADA/FHA requirements are likely to be an unplanned, unbudgeted but mandatory and costly improvement to association facilities. Failure to provide such

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requirements (and the special assessments that may be necessary for financing) could subject an association and its officers to liability suits and punitive judgments.

Special assessments can be difficult when member approval is required, and serious financial trouble can result if the members defeat a special assessment proposal. Members can rescind or reduce a special assessment at a membership meeting if held within 60 days of promulgation of the special assessment. The board should present adequate justification to the membership that a special assessment is necessary and the costs and consequences of other plans, including a "do nothing" alternative. The board should not commit to spend the money until the membership disapproval time has passed.

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Project Inventory Work Sheets

A. Association Area (Overall) - - - - - _____ Acres

B. Improved Areas:

1. Residential Building Area/Lots:

(for each):	(Length)		(Width)		(Total)
a. Length X Width =	_____	x	_____	=	_____sq. ft.
b. Length X Width =	_____	x	_____	=	_____sq. ft.

Total 1. = _____sq. ft.

2. Recreation Facilities (for each):

a. Club House	_____	x	_____	=	_____ sq. ft.
b. Pool Area	_____	x	_____	=	_____sq. ft.
c. Playground	_____	x	_____	=	_____sq. ft.
d. Other (etc.)	_____	x	_____	=	_____sq. ft.

Total 2. = _____sq. ft.

3. Paved Areas (privately owned):

a. Streets: (for each)	_____	x	_____	=	_____ sq. ft.
			Subtotal a.	=	_____ sq. ft.
b. Parking Areas : (for each)	_____	x	_____	=	_____ sq. ft.
			Subtotal b.	=	_____ sq. ft.
c. Sidewalks and Paths : (for each)	_____	x	_____	=	_____ sq. ft.
			Subtotal c.	=	_____ sq. ft.
d. Ball and Tennis Courts (for each)	_____	x	_____	=	_____ sq. ft.
			Subtotal d.	=	_____sq. ft.

Total 3. = _____ sq. ft.

4. Paved Areas (Publicly Owned):

a. Streets: (for each)	_____	x	_____	=	_____ sq. ft.
			Subtotal a.	=	_____ sq. ft.
b. Sidewalks and Paths: (for each):	_____	x	_____	=	_____ sq. ft.
			Subtotal b.	=	_____ sq. ft.

Total 4. = _____ sq. ft.

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C. Common Green Areas:

1. Landscaped:
   (for each area): _____ x _____ = _____ sq. ft.
   Subtotal 1. = _____ sq. ft.
2. Natural (stream valleys,
   buffers, open spaces) _____ x _____ = _____ sq. ft.
   Subtotal 2. = _____ sq. ft.

Total C. = _____ sq. ft.

D. Fence and Screen:

1. Pool: _____ x _____ = _____ sq. ft.
   Subtotal 1. = _____ sq. ft.
2. Other (Courts):
   (for each) _____ x _____ = _____ sq. ft.
   Subtotal 2. = _____ sq. ft.
3. Natural:
   (for each) _____ x _____ = _____ sq. ft.
   Subtotal 3. = _____ sq. ft.

Total D. = _____ sq. ft.

Summary

A. Association Area (total) _____ Acres

B. Improved Areas:

1. Residential Buildings _____ Sq. Ft.
2. Recreation Facilities _____ Sq. Ft.
3. Paved Areas (privately owned) _____ Sq. Ft.
4. Paved Areas (publicly owned) _____ Sq. Ft.

C. Common Green Areas:

1. Landscaped (Turf, Gardens, etc.) _____ Sq. Ft.
2. Natural (Stream Valleys, Buffers, etc.) _____ Sq. Ft.

D. Fences and Screens:

1. Pool _____ Sq. Ft.
2. Natural _____ Sq. Ft.
3. Other _____ Sq. Ft.

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Chapter 5 - OPERATING EXPENSES

This chapter discusses the broad array of expenses that are most commonly incurred by associations, and the ordinances that may affect the operation of a facility or regulate the services provided by a community association. General background information is given to assist in planning for normal operating and maintenance expenses and in establishing reserves for facility replacement or major maintenance costs. Many variables affect the cost of operating and maintaining the common facilities of a community association. The physical size and type of community, the type of common areas and facilities, and the number and age of residents using the common facilities determine the number of operating staff required. The quantity of supplies and equipment, frequency of service and replacement, the life span of the facilities also affects operating expenses, the hours of operation, and the utility costs. The season of year, daylight or nighttime use, indoor or outdoor location must also be considered in determining a budget and operating costs for an association's common facilities.

Contracting Procedures:

In its most basic meaning, a contract is an agreement between two parties. Typically, the agreement is for materials, a product, a service, or any combination of these in exchange for a specified lump sum price or fee schedule, or other compensation. Associations generally become involved in three types of contracts: 1) long- term service contracts for trash removal, lawn maintenance, and other repetitive needs; 2) management services contracts for maintenance, painting, snow plowing, and routine repairs; and 3) capital improvement construction contracts such as major road repair, a new clubhouse, or recreation facility. Every contract must include a defined scope of work, be competitively priced, and be properly performed to protect the association against losses. Problems for both contractor and the association arise from lack of information, misinformation, incompetence, non-performance, inferior workmanship, property damage, worker's compensation, or other claims. Adoption of a businesslike contracting procedure will help to avoid these problems and achieve satisfactory results. A contract procedure outlines the necessary steps, should specify a member or representative of the association who is responsible for each step, and includes a completion schedule to ensure that the materials, product or service is available when needed. When contracting, the following steps should be taken:

- Clearly define the scope of work and/or the services needed – If an association does not know precisely what the work entails, how is the contractor or provider to know? The directors can contact professional engineering, management, construction or other firms to discuss the association's needs or a specific problem; to define the proposed work and available options, and estimate the costs. Other associations are a good resource and may have valuable suggestions from their own experience.

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- Draft specifications for the project – The specifications should be as complete as possible, outlining in detail the specific services to be performed, the materials and equipment to be used, and either the frequency with which the services will be performed or the beginning and completion dates for a one-time contract. Inadequate specifications can result in bids that vary substantially and make comparison difficult or impossible since the bids will have been based on different interpretations of the specifications. To avoid this problem, it may be desirable to hire a consulting firm to draw up specifications. Another source of expertise is material suppliers, some of whom will prepare specifications free of charge in exchange for specifying their materials.

- Determine Responsibility for Permits and Inspections – Major improvements such as installation of a tennis court or swimming pool usually require more than one County permit to insure that the project complies with County zoning requirements and that the work is constructed in accordance with state and/or County codes. If the work is contracted, the specifications must make the contractor responsible for obtaining the permit(s) to put responsibility for code compliance, required inspections, and construction approval on the contractor rather than the association. The contract payment schedule should require County inspections and approval of the work as well as cleanup of the site before final payment. Contact the Zoning Evaluation Division at http://www.fairfaxcounty.gov/ocp/zed_homepage.htm or call (703) 324-1250 for special use permit(s); For construction permit information contact the Permits Division at http://www.fairfaxcounty.gov/dpwes/construction/permits.htm or call (703) 324-1555.

- List Contractors – Compile a list of contractors using the recommendations of other associations, personal experience, membership lists of professional trade organizations, and other sources;

- Prepare Request for Proposal – Prepare an RFP letter inviting these firms to submit bids or make presentations to the association. The letter should contain a copy of the specifications, the due date for submission of the bid, the date the contractor will be selected, the terms and conditions of the contract and the name and telephone number of the person to contact concerning any questions a potential bidder may have. Information about the association should also be included. For example, when soliciting bids for management services, enough information should be provided to enable a firm to make an intelligent bid for the contract. This would normally include data about the age of the development, kinds and numbers of units, acreage in the development and recreational facilities. Copies of governing documents, rules, regulations and financial data including the operating budget; and reserve fund balance should also be provided.

- Check References – Once the bids have been received, the reputation, experience and references of the firm(s) most likely to be selected should be thoroughly checked. The Better Business Bureau at (202) 393-8000 or http://www.bbb.org, and the Consumer Protection Division at http://www.fairfaxcounty.gov/living/cable/default.htm or (703) 222-8435 may be able to provide information concerning complaints filed against a contractor or company and how they were resolved. The firm's suppliers can be

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contacted to determine if the firm pays its bills on time. Its staffing, equipment and status of license should be verified to make certain it is qualified to handle the job;

- Verify County Licenses – Fairfax County requires that persons performing certain services be licensed and bonded as home improvement contractors. County licensure requirements do not apply to landscapers or painters but do apply to installers of aluminum or other siding, concrete work, structural changes involving doors, fire damage repairs, masonry, roofing, swimming pools, waterproofing and most other home improvement type work. Electricians, gas fitters, plumbers, and heating and air-conditioning contractors must also be licensed. The DPWES Licensing Section (703) 324-1540 will verify if proposed work requires a licensed contractor and whether a particular contractor is currently licensed and bonded. The DPWES Code Enforcement Branch at http://www.fairfaxcounty.gov/dpwes/navbar/about_us.htm#address or at (703) 324-1937 receives complaints about unlicensed contractors;

- Verify State Licenses – Depending on the nature of work and contract value, contractors may be required to be licensed by the Virginia Board for Contractors. License status and whether complaints have been filed against a contractor are available by calling the board at (804) 367-8504, or at http://www.state.va.us/dpor/indexie.html;

- Conduct Interviews – Schedule an interview with the potential contractor(s). This will enable the association to ask questions and gauge the firm's attitude toward the job, as well as permit the contractor to perform an on-site evaluation of the community and/or work prior to accepting the contract;

- Analyze Bids and Select Contractor – Select the contractor based upon detailed analysis of the bids received, evaluation of each firm's reputation and experience, and results of the interviews. A contract should be reviewed by the association's attorney prior to signing to assure its terms are in the best interest of the association. A major contract is one reason to hire an attorney if the association doesn't have one;

- Notice of Award – Notify all bidders of the association's decision to award, and thank them for their interest in working for the association;

- Make Contract Copies – Provide a copy of the contract to the person who is responsible for liaison with the contractor and the monitoring of the contractor's performance.

Based upon the scope, cost and duration of the proposed work, an association should consider hiring a professional who is experienced in this type of work. A thorough legal review of all contracts is very important to minimize the association's risk of inadequate protection provisions, loss of accumulated reserve funds, and exposure to liability claims. While contract terms and provisions vary, the following items must be clearly addressed to protect the association and to avoid misunderstandings:

- The lines of authority – the contractor must have the name and phone number of the person to whom he reports and from whom he takes instructions. Confused lines of

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authority often result in conflicting demands being made on a contractor, extra costs billed to the association, and the dissatisfaction of both parties;

- The scope of the work – the product, service, material, equipment, personnel, etc., that will be provided and at whose cost, should be specified in the contract or be attached to the contract by reference;

- Permits or inspections – when required, who obtains and pays for permits; and who is responsible for requesting inspection and approval from the appropriate authority;

- The total cost and terms of payment – should be clearly laid out and include the payment schedule and the amount of each installment;

- The time-frame of the contract – the duration of the contract with beginning and completion dates should be specified;

- The responsibility for liability insurance, etc. – the contractor and all subcontractors must provide proof of worker's compensation, personal injury, liability and property damage insurance;

- Damages to association property – the responsibility of the contractor should be spelled out in case of damage to association property;

- A recourse provision – the right of recovery by the association should be included in case of negligence by the contractor;

- All modifications must be in writing – provisions and procedure for contract changes and modifications;

- The conditions for termination of contract – conditions and provisions under which the contract may be terminated before completion, including financial or other consequences to the association and contractor;

- Warranties – warranty terms for labor and materials.

The association should develop a good working relationship with the contractor to regularly monitor the work and promptly resolve problems. All problems/concerns of the contractor should be discussed with the association liaison. A well-drafted contract and regular communications will help to make an association's dealings with contractors successful.

Utilities:

Utility costs vary substantially. An association with few facilities may have minimal utility costs, while an apartment-style condominium may be responsible for all the electric, natural gas, water and sewer expenses in the development and find utility costs a significant

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portion of its budget. (See also, "County Utility Taxes"). When projecting utility costs for budget purposes, there are several general steps to be followed, including:

- an inventory of all facilities/appliances that use the metered commodity, and note the location of each meter and the facilities/appliances served;

- information from past billings (1-5 years if available), to average the monthly consumption (such as kwh of electricity or therms of gas) and seasonal rate variations, etc. If the association has more than one meter that serves similar facilities, note any variations in usage that may indicate waste;

- seasonal adjustments for anticipated changes in consumption; e.g., conservation measures or added facilities and/or appliances;

- identifying the current rate schedule(s) used for billing, and if a rate increase, surcharge, or fuel adjustment factor is expected, and, if so, when it will most likely go into effect;

- calculating the cost of estimated usage for the coming budget year, adding in utility taxes, seasonal surcharges, and fuel adjustment factors.

Savings can often be realized by carefully analyzing utility usage and eliminating waste. Electricity may be saved by reducing light bulb wattage or the number of lights (assuming no substantial impact on safety), using timers to turn on electrical facilities as needed, etc. Often utility companies provide advice about conservation measures that can be taken. The following publications discuss various methods to reduce energy consumption in multi-family buildings:

- Energy Cost Control Guide for Multifamily Properties, by the Institute of Real Estate Management and the U.S. Department of Energy, (1981);

- Low-Cost/No-Cost Energy Conservation Measures for Multi-Family Housing, prepared by the Institute of Real Estate Management and the U.S. Department of Energy, (1981);

- Alternatives to Master Metering in Multifamily Housing, by the Institute of Real Estate Management, 430 N. Michigan Avenue, P.O Box 109025, Chicago, Illinois, 60610-9025; and the U.S. Department of Energy; (1981);

- Energy Audit Workbook for Apartment Buildings, prepared by the U.S. Department of Energy, Washington, D.C., 1979, Publication number DOE/CS-00411; available from the National Technical Information Service [NTIS], U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161; Tel. (703) 487-4650); Cost $34.

Electricity - Dominion Virginia Power and Northern Virginia Electric Co-op supply electricity to County residents. Electrical costs for most community associations are limited to those incurred for outdoor lighting and recreational facilities. Condominium unit owners' associations are responsible for the electricity used in their common areas and may also be responsible for paying for all electrical consumption in the development.

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Sub-metering and Individual Metering - If the electricity service in a development is master-metered, the electric company bills the association for the total electricity consumed through the master meter. Such systems may be eligible for bulk rate electricity depending upon the size of the community served and the amount of electricity consumed. The association might still consider the feasibility of sub-metering to make each household responsible for its own electrical usage. Sub-metering (or individual metering) allocates electrical usage to those responsible and tends to promote energy conservation. The association is responsible for reading each unit's meter, preparing the bills, and collecting reimbursement monies due to the association. The Virginia State Corporation Commission (SCC) has regulations governing electrical submetering. A copy of the regulations is available from the SCC at 1-800-552-7945, or (804) 371-9733, or at http://www.state.va.us/scc/index.html

Individual metering refers to the installation of a meter in each unit by the electric company, making each household a residential customer. The electric company reads the meters, bills each household, handles service complaints, etc., and the association is billed as a separate customer only for the electricity used in the common areas and facilities. If the electric service in a residential association is master-metered and the association wants to convert to individual metering, the association is responsible for the costs incurred for rewiring or retrofitting and for the individual meters. Such conversion to individual metering in a master-metered building can be costly, and it is suggested that an association contact its electric utility for assistance when conducting a cost and feasibility analysis for individual metering.

Electric Outdoor Lighting - Street lighting in residential areas is not required by the Fairfax County Zoning Ordinance. The County street lighting program provides lighting only on public streets in the VDOT state secondary road system to deter crime and to light hazardous roadway intersections. Privately owned streets do not qualify for such lighting. For the criteria to qualify for County-provided street lighting, an association adjacent to public streets in the state system should contact DPWES at (703) 324-5800, or online at http://www.fairfaxcounty.gov/dpwes/utilities/streetlightmain.htm.

Outdoor lighting discourages crime, helps to prevent accidents, and extends daylight hours for recreational and business purposes. Outdoor lighting fixtures can be leased from the electric utility company. Electrical power and maintenance are provided for a set monthly fee per fixture (plus fuel adjustment charge). In July, 1993, the State Corporation Commission granted permission for Dominion Virginia Power to expand its "NightWatch" Outdoor Lighting Service for installation of high pressure sodium vapor lights to multi-family residential, and to some non-residential customers. Sodium vapor is the most efficient lighting source available for outdoor purposes. The "NightWatch" program is available to single family homes, places of worship, civic organizations, and multi-family structures such as condominiums and property owners' associations, townhouses, and apartments. Commercial properties are also eligible where poles exist.

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"NightWatch" provides outdoor lighting fixtures and maintenance for a fixed monthly fee added to the monthly electric bill. While the monthly cost varies, based upon the style and size of the light, a basic fixture costs approximately $10 - $15 per month. In some cases there may be a separate installation fee, along with a one-time initiation fee. Dominion Virginia Power has several fixture styles to address different needs and conditions. They will install and maintain the lights for a monthly fee, or the user(s) may purchase the lights and have them installed by their own contractor. Some associations own their outdoor lighting fixtures, pay for the cost of electric service and usage but are responsible for maintenance of the fixtures. Maintenance costs and replacement reserves for outdoor lighting fixtures should be included in these associations' budgets in addition to the electrical consumption.

Maintenance costs for outdoor lighting vary substantially, depending on the type of lighting (incandescent, mercury vapor, or sodium vapor), amount of illumination (lumens) produced by the fixtures, and the life expectancy of the lamp (bulbs). Additionally, the age, height, durability of globes or lenses, type of wiring, etc., will affect maintenance costs. An electrical contractor may be required to perform maintenance and repairs on HOA owned systems. The cost of the services of an electrical contractor will depend on the equipment necessary to perform the maintenance. Some private electrical contractors provide maintenance contracts for outdoor lighting. The terms of a maintenance contract may, for example, include two maintenance service visits per year for a set fee. The service is basically designed as a preventive measure and will include such things as checking the transformers, wiring and connectors; cleaning the fixtures; and checking for cracks in the lamps to prevent moisture seepage. Area contractors and suppliers can provide guidance about the costs of labor and replacement parts for outdoor lighting fixtures, if an association does not have past experience on which to base these costs.

Associations contemplating replacing their present type of outdoor lighting with a more energy efficient type of lighting (e.g. changing from mercury vapor to sodium vapor lighting) should research the conversion and maintenance costs carefully and compare them to the long-term savings attained through reduced energy usage before making the change. Changing from one type of outdoor lighting to another can be a very expensive procedure as ballasts, bulbs, wiring, etc., for different types of fixtures are often not interchangeable and require replacement of the present fixtures with new ones. The replacement costs of the component parts of more efficient fixtures may be more expensive than their less efficient counterparts.

Reserves for outdoor lighting fixtures should be based on their replacement cost and a life expectancy of 15-20 years. An association may want to base its reserves on the cost of replacing its present lights with a newer and more energy efficient lighting system, rather than the replacement costs of the lights currently installed. If so, a review of the innovations in lighting and their life-cycle costs should be made every few years to assure adequate reserves are available when needed. For inquiries or problems regarding rate schedules or electrical service, an association can contact its electrical service supplier at the following offices:

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Dominion Virginia Power Co.
11133 West Main Street
Fairfax, VA 22030
http://www.dom.com/index.jsp
e-mail: Customer_Service@dom.com
(888) 667-3000 or (703) 934-2519 for customer service

Northern Virginia Electric Cooperative (NOVEC)
P.O. Box 2710, Manassas, VA 20108-0875
(703) 335-0500; Toll-Free: (888) 335-0500
http://www.novec.com
E-mail to: info@novec.com

Natural Gas - Natural gas is supplied to Fairfax County by Washington Gas, a division of Washington Gas Light Company, and by Columbia Gas of Virginia, Inc. Associations typically use gas for outdoor lighting, swimming pool heaters, hot water heaters and space heating (individual units and common boiler systems). An association may have master-metered gas systems; if so, the association should be aware of its responsibilities for operation and maintenance. The gas company is responsible for the maintenance of the pipes on its side of the meter whereas maintenance and repair of any underground gas pipes on the (downstream) association's side of the gas meter is the Association's responsibility. In high-rise, garden style, townhouse or other multi-family type construction, it is very impractical to provide separate meters for each residential unit due to the large size. The association must develop a fair and impartial formula to account for variable unit volumes and the number of occupants to allocate the master-metered cost to individual residential units, as well as a uniform cost for each unit's share of common element gas usage.

In 1968 Congress passed the Federal Gas Pipeline Safety Act to deal with the dangers posed by gas leaks from corroded pipe. The Act mandates certain construction, maintenance and safety standards for gas pipelines. While the Act is aimed primarily at utility companies and major gas distributors, under its provisions, condominium and homeowners associations that are responsible for gas pipelines are considered operators of gas distribution systems and must comply with the regulations issued by the U.S. Department of Transportation's Office of Pipeline Safety. A written Operation and Maintenance (O and M) plan is required of all gas operators by the pipeline safety standards and must include steps to be followed to accomplish the required operational and maintenance procedures. If you are a master-meter customer, your O and M plan must include the following procedures:

- Instructions for Employees
- Emergency Procedures
- Line Markers
- Patrolling
- Leakage Surveys
- Abandonment of Facilities
- Testing for Reinstating Service Line
- Accidental Ignition of Gas
- Key Valves Maintenance
- Measuring the Odorization of Gas
- Cathodic Protection
- Leak Repairs – Construction
- Emergency Plans

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A condominium or homeowners association maintain and follow an organized O and M plan for compliance with federal law and as protection and defense against any civil suit(s) for damages from the gas system. The Guidance Manual for Operators of Small Gas Systems, published by the U.S. Department of Transportation, Research & Special Programs Administration, 2002, for small operators such as master-meter systems, details these procedures and explains requirements of the pipeline safety act. The 2002 edition of the Manual is online at http://www.tsi.dot.gov/divisions/pipeline (see Publications). Contact the following for more information:

Washington Gas
Customer Services Division
1100 H Street, NW
Washington, DC 20080
(703) 750-1000
http://www.washingtongas.com

Transportation Safety Institute
Pipeline Safety Division
6500 S. McArthur Blvd.
Oklahoma City, OK 73125
(405) 954-3153 or (405) 954-7219
http://www.tsi.dot.gov/divisions/pipeline/pipeline.htm

American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
Phone: (202) 824-7000
http://www.aga.org

Water / Master Metering - The Fairfax County Water Authority supplies Water to most associations in Fairfax County, however the towns of Vienna and Herndon and the cities of Falls Church and Fairfax also provide some water service. Most condominium and homeowner associations are responsible only for the water used by their recreational facilities. However, some associations are master-metered, and the association pays for all water used in the community. Master metering makes it difficult for an association to institute and enforce water conservation programs, as it is difficult to identify those households that waste water. Due to the extensive plumbing required to convert from a master metered system to individual meters in apartment buildings, the Fairfax County Water Authority does not view this as a viable way for an association to reduce its water costs. However, it may be economically feasible for master-metered townhouses to convert to individual water meters, thus providing each household with control over its own water and sewer costs. Associations interested in changing to individual meters should contact its water supplier for more information.

The two most important factors in minimizing association water costs are the proper maintenance of plumbing fixtures and the use of good conservation techniques. Fixtures that do not operate properly can waste considerable amounts of water. Leaking faucets and commodes that run continuously are among the most common cases. A single malfunctioning fixture can affect the efficient operation of the entire plumbing system and cause excessive repair and labor costs. Associations can contact the Water Authority's Customer Service Department for help in locating water-wasting fixtures, and for help in implementing water saving techniques.

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Community associations are generally responsible for maintaining all water pipes that serve the common areas, and individual homeowners are responsible for pipe maintenance from the point where their plumbing system taps into the main system. In most instances the tap for each dwelling is in front of the house. However, in some townhouse developments, this tap to the main may extend through one or more yards and under common lawn areas, streets and/or sidewalks. Often property owners are not aware of this at the time of purchase, nor are they aware of the potential cost of such extensive plumbing work when required.

Water for Swimming Pools - Commercial and residential customers are charged quarterly for their normal water consumption based upon the metered volume, and charged again (on the same volume) for sanitary (sewer) treatment services. Swimming pools, however, are typically filled or "topped off" once annually before the start of the swimming season and the concurrent high-cost water use season. Further, because of the harmful affect of chlorine on the sanitary (sewer) treatment process, swimming pools discharge into storm drains and bypass the sanitary treatment system. The Fairfax County Water Authority can pass the considerable cost savings for non-peak-season water consumption and for no sanitary waste treatment to the user/association, provided that certain conditions are met.

Condominium and homeowner association swimming pools (and privately owned pools) must be sub-metered separately from the domestic supply and must be filled by May 15th to avoid the high-peak-use rate that becomes effective as of the June 1 each year. To be exempt from sanitary treatment charges on the pool water volume, an association must call the Water Authority at (703) 698-5600, or the Authority's "Pool Line" at (703) 289-6188 *each year* to request an Exemption Form with the association's (or individual's) address and account number. The form will be mailed to the association address to be completed, signed and returned to the Water Authority prior to the June 1st deadline. More information about zoning, permits and construction of swimming pools in Fairfax County is at http://www.co.fairfax.va.us/gov/dpwes/publications/pool.htm.

Sewer Service - The Fairfax County Department of Public Works provides public sewer service to most associations. Lateral pipes connect the sanitary waste collection system in a house or building to the street main. Property owners are responsible for maintenance and repairs out to the lateral connection to the main. In condominiums, laterals are common elements and are clearly the association's responsibility. If a sanitary system problem occurs, contact the Line Maintenance Division at (703) 323-1211 to determine the repair responsibility. General information and non-emergency calls should be made to (703) 324-5020.

Sewer charges for individually metered homes are based on the amount of water used or a County average for the winter quarter. Most condominium associations are master-billed according to the total amount of water used. Individual unit charges are included in the monthly dues and may be prorated by the association according to the residential unit size and/or number of unit residents. Various water suppliers in the

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county collect fees for sewer service based on the quantity of water used, but the Fairfax County Board of Supervisors sets the fee rates. The cities of Falls Church, Herndon, Vienna and Fairfax levy their own sewer charges for customers using their sewer systems. Rates and billing procedures for an association's water supply/sewer service can be determined by:

Fairfax County Water Authority Customer Service
(703) 698-5800 / http://www.fcwa.org/customer/index.htm

Fairfax City Department of Transit and Utilities
(703) 385-7915 / http://www.fairfaxva.gov/Services/Utilities/utilities.htm

Vienna Water/Sewer
(703) 255-6385 / http://www.ci.vienna.va.us/TownServices/watersewer.htm

Falls Church Water/Sewer
(703) 248-5071 / http://www.ci.falls-church.va.us/services/index.html#water

Herndon Water/Sewer
703) 435-6853 / http://www.town.herndon.va.us

Miss Utility - All major area utilities participate in the "Miss Utility" program which locates and provides information about underground utilities to prevent damage and severing of service during construction projects. Utility companies hold property owners responsible for damages to underground utilities resulting from digging operations. Associations and their contractors should call "Miss Utility" at 1-800 257-7777 or contact online at: http://www.missutility.net/northernvirginia.asp. This is another important contractor requirement to be written into any association contract. The Miss Utility program guarantees that within 48 hours of being contacted (excluding weekends), the companies involved will visit the location and mark the areas where their cables, pipes and other utilities are located. To eliminate the possibility of severing a pipe or cable, the contractor must not dig closer that three feet to either side of the utility location markings. The contractor has 10 working days to complete the excavation and underground work in the vicinity of the utilities.

Wells - Fresh Water Domestic Supply - Groundwater beneath the earth's surface is the earth's largest fresh water supply, and protection of this resource is vital. Clean, potable well water is a vital domestic necessity because more than 15,000 homes and businesses in Fairfax County rely on groundwater wells for their domestic water supply. The Fairfax County Health Department reviews and inspects well construction to assure that the groundwater supply is protected from potential contamination. Improper use and/or disposal of fertilizers, herbicides, pesticides, motor oil, solid wastes, paint solvents, detergents, cleansers, and other toxic household chemicals and substances constitute a major threat to the groundwater supply. Underground storage tanks for home heating oil or other toxic materials can corrode, allowing pollutants to leak into the groundwater – one quart of oil can contaminate up to 2 million gallons of water. If not properly

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maintained, septic tanks (common in areas served by groundwater wells) may also threaten the quality of water drawn from private and community groundwater wells.

All well work, whether initial drilling and grouting, or repairs and/or additions to equipment on existing wells must be done by licensed and bonded contractors who have Health Department authorization to perform work in Fairfax County. A permit is required prior to making repairs or installing conditioning equipment on any well in Fairfax County. The Health Department will assure not only that the work is needed, but that it is done properly, and will test the water for bacteriological quality after the work is completed. The Health Department recommends that wells be tested yearly, after any repairs to or construction around a well, or if a change in taste or color of the water is noticed. In addition to protection standards and bacteriological quality testing, the Health Department can test for and conduct a chemical analysis for iron, lead, acidity or hardness of water.

If an association is served by private or community wells, and is at risk of property damage and/or personal injury claims stemming from contamination of groundwater resulting from maintenance activities, the maintenance staff (whether association employees or contracted services) should be made aware of the existence of the wells. Maintenance procedures should be tailored to prevent even potential contamination of the groundwater, either by surface runoff or by ground percolation. Curbs or roadside ditches and the stormwater management system (including detention and retention ponds), and adjacent woodlands and streams are favorite locations for illegal and hazardous disposal of toxic substances. An association can help to protect groundwater quality by informing its members through an awareness/education program that focuses on the proper disposal of toxic and hazardous substances. Steps to protect well water supplies include:

- do not store toxic or hazardous substances near any well; do not overuse or abuse fertilizers, pesticides or herbicides; carefully follow package or container directions for storage and disposal of all potentially toxic substances and materials;

- do not flush toxic or hazardous substances down toilets or pour them into home drains, storm drains, on the ground surface or into streams and drainage channels; and

- call the County Health Department for advice and information on proper disposal of toxic substances or to have a well inspected and tested.

Septic Tanks, Required Maintenance - Septic tank systems, consisting of an underground receiving/holding tank and sub-surface distribution and absorption system for domestic wastes, are used in many parts of Fairfax County where public sewers are not available. Wastewater and solids from sinks, showers, toilets, washing machines and dishwashers that normally flow into a sanitary sewer, flow instead into the septic tank. The solids settle to the bottom, are digested by bacteria, and broken down into sludge that

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accumulates over time. Grease, scum and other substances float to the top. The remaining contaminated effluent and polluted waste liquids flow into the sub-surface distribution and absorption system where they are "leached" into the soil, filtered and purified by the continued natural bacterial processes, and eventually return to the groundwater supply.

When properly maintained, a septic system can be expected to provide an extended and trouble-free service life. However, non-biodegradable detergents, caustic drain cleaners, and other toxic household products, can retard or kill the bacterial action in the tank or ground. Similarly, careless and/or thoughtless disposal of toxic materials on the ground surface near septic fields can be as harmful as if discharged directly into the tank. An association's maintenance staff or contractor should know the locations of the septic tank, distribution box and flow diversion valve (if part of the system), and the perimeter of the absorption/leeching area or field. Trees, shrubs and other landscape material (except grass) should not be planted closer than one mature plant diameter from the perimeter of the septic field, and no driving or parking of motor vehicles over any part of the system should be permitted. Such abuse, or even simple neglect, can cause the system to malfunction or fail, making costly repairs necessary, and creating a health hazard for those who are dependant upon the local ground water for domestic consumption and use.

State law requires regular maintenance of septic tanks. The Fairfax County Code and the Virginia Chesapeake Bay Preservation Act require all septic tanks to be pumped out at least once every five years by a licensed contractor who will provide a written manifest to be sent to the Health Department to verify compliance with the law. Regular tank pumping decreases the likelihood that accumulated sludge and grease will clog the drain field, a major cause of premature system failure and helps to protect ground and surface water resources. Typically, such failure (loss of percolation) is long-term or permanent, requiring the construction of a new drain field elsewhere on the site at considerable cost. Septic system repairs or reconstruction require a cost-free permit from the Health Department.

An on-site septic system for the public facilities (pool bathhouse and rec. center rest rooms and kitchen, etc.) in an owners' association must be regularly pumped. The association should include this required service in its operations schedule and budget to prevent the consequences of a septic system failure. If the Health Department has not been notified of septic system pumping, the association should send the pump contractor's bill or a letter identifying the association, the address of the septic system, and the date the system was last pumped to the Division of Environmental Health. For a list of licensed septic system contractors, to abandon an existing septic system and connect to a public sewer, for a required septic system repair permit, or for other information concerning septic systems, contact the Health Department at (703) 246-2201 or online at http://www.fairfaxcounty.gov/service/hd/ehdweb.htm.

Refuse / Solid Waste / Trash Collection - Solid waste and refuse collection in Fairfax County is provided by public or private services regulated through Section 109 of the County Code. County service in special sanitary districts (only) provides weekly

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curbside collection of recyclables, refuse, and bulky items for an annual fee for approximately 38,000 customers. In other residential areas of the county, normal household trash and refuse are collected at least once per week by solid waste collection companies which must have a County permit. Dead animals, manure, tree stumps, dirt, stone, rock or brick, poisons, dangerous chemicals, explosives, and refuse too heavy to be safely loaded in collection vehicles are not required to be collected. These items can be collected on a request basis for a separate fee or must be taken to a designated disposal location.

The Fairfax County Department of Public Works, Division of Solid Waste Collection and Recycling and the Division of Waste Disposal and Resource Recovery regulate the more than 30 private refuse collection firms that operate in the County, and investigate complaints of recycling or refuse collection violations. A refuse collection permit is granted only after a firm provides evidence of having public liability insurance covering its operations and vehicles, and shows that it will provide county-required minimum levels of service. Each firm is required to maintain a business office and to inform customers, in advance, of the firm's name, address, and telephone number; the company rules and regulations regarding its service and collection schedules; and its policy concerning collection on holidays and snow days. No advance billing for refuse service in excess of 90 days is permitted. Persons observing improper collections or who have trash collection/disposal questions should contact the Fairfax County Department of Public Works, Division of Solid Waste Disposal and Resource Recovery at (703) 324-5230 or at http://www.fairfaxcounty.gov/dpwes/trash/refusecollection.html

Recycling Collection - Fairfax County has a mandatory recycling program applicable to all residences including apartments, condominiums, town houses, single family homes, etc. This program began in 1987 with curbside collection of newspapers. In 1993, the program expanded to include weekly collection of most recyclable materials such as newspaper, steel and aluminum cans, and glass containers, (plastics, cardboard, aseptic packaging and other miscellaneous materials are voluntary). The separate collection of yard debris was added in 1994.

The success of any recycling program is dependent upon the cooperation of the contributing residents at the beginning of the collection/recycling process. The Fairfax County Code requires that designated recyclable materials be source separated – meaning the exclusion and separation of required recyclable material(s) in a separate location and/or container at the residence, and distinct from solid waste and trash intended for disposal. Further, the co-collection of source-separated recyclable materials and disposable trash in the same vehicle is a violation of the County Code. All solid waste collectors must provide collection of recyclable materials to all of their customers. Some companies collect recyclable materials on different days than disposable trash to further reinforce the need for material separation at the source.

The physical layout of a development and type of residential structure(s) can affect the type, location and convenience of collection facilities while education, promotion and cooperation of the residents determines the overall success of a recycling program. The association management has an important role in motivating the residents

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to participate willingly. In communities of single-detached homes where each family contracts directly with the collection company, the recycle collection conveniently requires placement of separated materials at the curbside on collection days. Some associations, however, include collection of disposable trash and recyclable material in the property assessment and may have a recycle center located on community common ground. Disposable household trash is collected at each residence whereas recyclable materials must be brought to the community collection point. This minor inconvenience may be offset by reduced collection costs.

Residential apartment, cooperatives, condominium and townhouse associations in Fairfax County are required to provide residents with the opportunity to recycle newspapers, steel, aluminum, bi-metal and glass food and beverage containers. The fundamentals of recycling in multiple-family dwellings are the same regardless of whether the structure(s) is/are garden style or high-rise. The key elements are flexibility in the approach and planning of the recycling program, and proper communication between the association, management and the residents. It is important to emphasize education, awareness, cooperation and flexibility of the building staff and residents, not only before, but throughout the life of the recycling program. The successful apartment, condominium and townhouse recycling programs have been modified over time to incorporate practical experience, "user-friendly" adjustments, changing conditions, and resident feedback. The owners' and managers' willingness to be flexible is essential for a program that "fits" the building and is convenient for residents, building staff, and the solid waste collector. Building and property managers should remember that if residents are motivated to recycle "because it's the right thing to do" rather than being ordered to comply, they become a resource for implementing and maintaining a successful recycling program.

It is highly recommended that property managers work with the solid waste collector in performing a site assessment and "recycling/waste audit" for the complex. This assessment should provide a comprehensive picture of solid waste generation and the handling process and disposal system for the complex, as well as verify the type and volume of collection containers or equipment and the frequency of service. Residents should be actively involved in planning and monitoring of the program as well as the source separation. This involvement educates and motivates residents to participate, puts a positive slant on the program, frees association staff, and minimizes costs. The system determined by the waste collector's "recycling/waste audit" and collection schedule must be convenient and "user-friendly" to gain the support and cooperation of the residents. Communication between management and the residents through a community newsletter or bulletins, a "recycling committee," discussions at meetings, and system flexibility based upon resident feedback are all essential elements of successful recycling programs. Other essential elements include the program design and operation, safety and security measures, signage, education, organization, and positive reinforcement. Assistance in establishing a successful community recycling program is available from the Fairfax County Recycling Hotline at (703) 324-5052, or from the Solid Waste Collection and Recycling Div. at: http://www.fairfaxcounty.gov/dpwes/trash/refuse_collection.html

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Contract Guidelines for Collection and Recycling Services - Many associations contract for refuse and recycling collection services for all of their residents and include the cost in the monthly assessment. By volume contracting on behalf of all residents, the association may be able to negotiate a better collection fee at a volume discount and even include collection for the common areas and facilities. Rates for private refuse collection are affected by:

- the number of pick-ups per week;
- the type of service contracted for – centralized dumpster or individual curb service and whether the contractor provides trash containers;
- whether an association contracts for all units in the development or just the common areas and facilities;
- whether the special pick-up of large and bulky items is included in the contracted service, or separately charged; and
- whether the association specifies a short or long time period for collection, e.g., 8 8:00 a.m. to 11:00 a.m. or 7:00 a.m. to 3:00 p.m..

Whether the association refuse collection service is limited to the common areas and facilities or includes individual living units as well, the association must determine if the present service is satisfactory or whether it should seek different contracted terms, or a different firm. In Fairfax County, it is illegal to contract with an unlicensed solid waste collection firm and an association can be fined for contracting with an unlicensed collector.

Lawn and Grounds Maintenance

An association's maintenance responsibilities will depend upon the size and type of the common areas, their structures, landscaping, and use. A comprehensive grounds maintenance plan will: (1) present a neat community appearance, (2) preserve the community's investment in grass, trees, shrubs and equipment, (3) help to maintain property values, and (4) project a sense of pride among the association's residents. A comprehensive maintenance plan usually includes an annual and long-term program and removal of yard debris produced by maintenance activities. Condominium and townhouse communities might obtain an exemption from mandatory yard debris recycling if their landscape maintenance contractor removes and recycles the yard debris. Contact http://www.fairfaxcounty.gov/dpwes/trash/refuse_collection.html online or call the Recycling Hot Line at (703) 324-5052. Annual grounds maintenance programs describe the tasks that are to be performed on lawn areas, wooded areas, play areas, etc. throughout the year, including a schedule for their performance, and assign responsibility for completing each task. Lawn areas usually require the following maintenance tasks:

- weekly lawn mowing and trimming around buildings, walks, structures, fences, trees, ponds, playgrounds, etc., (20-25 mowings per year);

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- edging along walks, curbs, and pavements (4-5 times per year);

- seeding, fertilizing, liming, herbicide and insecticide applications as needed and/or recommended by a lawn care professional;

- mulching and pruning of shrubs and trees to remove dead and unsafe branches and to retain proper shape and size;

- spring and fall grounds inspection and clean-ups of trash, debris, storm damage, and other unsightly and unsafe conditions; and

- general maintenance of active playgrounds, ball fields, and park or wooded areas, including fence and equipment repair, painting, replacement of sand or wood chips, repair of erosion or storm damage, vandalism, and preparation of ball fields for use.

A long-term grounds maintenance plan will outline a multi-year program for facility development and grounds care including a schedule of infrequent maintenance tasks such as painting of benches, trash receptacles, signs, outdoor lighting, etc. The following Internet links provide a wealth of published information and technical guidelines for turfgrass, lawn, garden and tree maintenance topics from the Virginia Cooperative Extension Service (703) 324-5310 in Fairfax County):

http://www.ext.vt.edu
http://sudan.cses.vt.edu/html/Turf/turf/links/links_page.html
http://sudan.cses.vt.edu/html/Turf/turf/index.html
http://www.ext.vt.edu/resources/anrpublications.html

The Fairfax County Library has numerous books on landscape and lawn maintenance. Additionally, the following publications may prove useful to associations in preparing a ground care program:

- Citizens Water Quality Handbook, prepared by the Northern Virginia Soil and Water Conservation District (NVSWCD), 1994, (advises on lawn maintenance, open space management, stream management, water quality monitoring, and erosion control, and other topics). Contact NVSWCD at http://www.fairfaxcounty.gov/nvswcd or at (703) 324-1460.

- You and Your Land – A Homeowners Guide to the Potomac River Watershed – prepared by the Northern Virginia Soil and Water Conservation District (NVSWCD), 2002; (it advises homeowners and associations about the environmental relationships between residential properties and their affect on the larger Potomac River Watershed. Contact NVSWCD at http://www.fairfaxcounty.gov/nvswcd or at (703) 324-1460.

- A Handbook of Public Playground Safety, publication # 325, by the Consumer Product Safety Commission (CPSC), 2000, is a two-volume publication of safety guidelines for

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new and existing playground equipment and surfaces. A free copy is available by sending a postcard containing the title, publication #325, your name and return address to: CPSC Publication Request, Washington D.C. 20207. For this and other free publications on playground safety, contact CPSC at (301) 504-0580 or online at http://www.cpsc.gov, select Library (FOIA), CPSC Publications, By Specific Topic, and Playground Equipment.

Professional Grounds Care Services - Many associations contract with professional service companies for some or all of their common grounds care. The contracting procedures described in Chapter 3 should be followed when contracting for lawn maintenance services. When evaluating a lawn maintenance firm, inquire about off-season staffing. Some firms rely on students to perform much of their maintenance work during vacation periods and may not be able to provide the same level of service during school periods in early spring and late fall. It is also advisable to visit an association or business currently using the firm under consideration to discuss and inspect the quality of the grounds care. The following ideas and activities may reduce an association's lawn care expenses:

- Hold community clean-up days in fall and spring. Some associations require each household to contribute either 4 hours of work on a weekend or "donate" $10-$15 to allow the association to hire someone to perform the work; others offer credit against the annual assessment.

- Purchase lawn care supplies rather than having them provided by a lawn maintenance firm. Use mulch around trees and transition areas to reduce the need for trimming; turn mulch and add only as needed rather than replace it annually.

- Obtain a free soil analysis by using the kits available at the County libraries. The kits are provided by the Virginia Cooperative Extension Service, which will determine the pH and levels of nutrients in the soil from which liming and fertilizing programs can be developed.

The following Guideline Specifications for Commercial Lawn Maintenance, written and published by the Virginia Cooperative Extension Service ((703) 222-9760 in Fairfax County) provides a good outline for maintenance needs of lawns in this area, as well as guidelines for bid specifications for contracted professional lawn maintenance services.

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EXTENSION DIVISION
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

GUIDELINE SPECIFICATIONS FOR COMMERCIAL LAWN MAINTENANCE [25]

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Issued in furtherance of Cooperative Extension Service work, Acts of May 8 and June 30, 1914 and September 30, 1977, in cooperation with the US Department of Agriculture. W. R. Van Dresser, Dean, Extension Division, Cooperative Extension Service, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 24061; M.C. Harding, Sr., Administrator, 1890 Extension Program, Virginia State College, Petersburg, Virginia 23803. An Equal Opportunity/Affirmative Action Employer. The Virginia Cooperative Extension Service, by law and purpose, is dedicated to serve all people on an equal and nondiscriminatory basis.

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Introduction

This publication is designed to provide guidelines for consumers writing bid specifications for the purchase of professional lawn maintenance services on large lawn areas. It will be beneficial to managers of apartments, condominiums, estates, institutions, recreational areas and general turf areas who are seeking the services of a professional lawn maintenance company. It should be emphasized that these are only guidelines or items for consideration and that the success of any contract depends upon a competent contractor, under supervision of a knowledgeable approving agent. Obviously, an uncooperative party can make the best contract unworkable. Specification writers using these guidelines should not assume that the wording meets all the contractual needs of their particular situation.

To allow for most accurate bidding on the specifications it is suggested that a soil test sample randomly taken from the area to be maintained be submitted to either; Virginia Polytechnic Institute and State University or a reputable commercial laboratory. These results will be most helpful to contractors in pricing lime and fertilizer bids for the site.

How To Use This Publication

This publication is separated into the following four general categories of specifications. General support and responsibility specifications are considered essential in all bids. Basic and accessory maintenance items should be selected based upon individual desires. The italicized blanks in these specifications need to be filled in, or crossed out, making choices where necessary. It may be desirable in some situations to omit certain sections of these specifications, depending upon the services desired by the consumer.

General Support Specifications: Provides needed information about where the work is located, what areas are involved and what type of service is expected over the time period noted. This information should be used in all specifications.

Basic Maintenance Specifications: Provides guidelines for requesting the basic management services provided by commercial lawn maintenance companies.

Accessory Maintenance Specifications: Provides guidelines for maintenance procedures which are only periodically required in most lawns but may be necessary in the early stages of a contract to correct existing problems due to excessive thatch, compaction or the presence of weak turfgrass species in the lawn. In areas where very high quality is desired, most of these accessory items will be necessary.

Responsibility Specifications: Provides guidelines specifying labor and materials to be used, the contractor's responsibility to the consumer, the period covered by the contract and the nature of payment. This information should be used in all specifications.

For planning purposes, Table 1 indicates which maintenance specification would be considered essential for low, medium and high levels of turfgrass maintenance. The specification writer should utilize the specifications that will provide the desired level of turfgrass quality.

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Table 1. A summary of the maintenance specifications which are considered essential to obtain low, medium and high levels of turfgrass quality.

Maintenance Operations	Specifications Suggested for Various Levels of Turfgrass Quality		
	Low	Medium	High
Basic			
Mowing and Trimming	x	x	x
Edging			x
Leaf Collection		x	x
Fertilization	x	x	x
Liming	x	x	x
Herbicide Application		x	x
Accessory			
Fungicide Application			x
Insecticide Application			x
Aeration			x
Dethatching			x
Overseeding		x	x

I. GENERAL SUPPORT SPECIFICATIONS

A. Location and Participants:

Work is to be done at _____*(location)*_____to include area(s) on attached drawings. This area is *(owned / supervised)* by *(name of owner / supervisor)*. _____*(name of approving agent)*_____ is the contractee's approval agent.

B. Scope of work:

This work includes all labor, materials, equipment, supplies and services necessary to maintain the above turf areas in a condition satisfactory to the owner during the period from *(beginning date)* to *(termination date)*.

II. BASIC MAINTENANCE SPECIFICATIONS

A. Mowing and Trimming:

1. Minor amounts of debris will be removed prior to mowing if shredding of the debris would be detrimental to the appearance of the turf area. Major amounts of debris will be considered the responsibility of the owner/supervisor and will be removed prior to mowing on a cost plus basis by the contractor.

2. General turf areas will be mowed at a mowing height of (see Appendix, note 1) inches

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when the grass reaches a height no more than 1/3 greater than the mowing height with a *(reel, rotary or flail)* mower. Mowing height on the cool-season turfgrasses will be increased by 25 percent in summer to reduce total stress on the turf. Mower heights are measured with mowers on a flat, paved surface. Mowers with sharp cutting edges shall provide a high quality of cut. Mowing will be accomplished in such a manner as to not damage trees and shrubs.

3. Mowing shall be required no more than 30 times per year. Mowings in excess of this will be provided on a cost per service basis.

4. Clippings will be removed from sidewalks, patios, etc. after each mowing. Clippings *(will / will not)* be collected and removed from the site after each mowing.

5. The contractor shall remove excessive clippings, resulting from growth rates that exceed the contracted mowing frequency, from lawn areas.

6. Trimming around trees and shrubs shall be performed after each mowing as necessary, using *(herbicides / hand labor / mechanical devices)*. If herbicides are used, they will be applied under the supervision of a Certified Pesticide Applicator in accordance with label use and approved industry practice.

7. Bid Quotation for A. Mowing and Trimming: $ _____ Per Service

B. Edging:

1. Edging of all accessible sidewalks, curbs and patios once per (service frequency) from (beginning date) to (termination date).

2. Dirt and debris from edging operations shall be removed and disposed of off-site.

3. Method of edging shall be mechanical.

4. Bid Quotation for B. Edging: $ _____ Per Service

C. Leaf Collection:

1. Leaves shall be removed from the site _____ times per year.

2. Times of removal will be: (30 day intervals suggested)
   Between _____ and
   Between _____ and
   Between _____ and

3. Leaf removal includes ornamental plantings, sidewalk, patio and driveway areas.

4. Bid Quotation for C. Leaf Collection: $ _____ Per Service

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D. Fertilization:

1. The fertilization program will provide the equivalent of (see "Lawn Fertilization in Virginia") ____ lbs. of soluble nitrogen per 1000 sq. ft. per year. Soil test samples will be analyzed by a mutually agreeable laboratory a minimum of once every 3 years.

2. Where Kentucky bluegrass, tall fescue, creeping red fescue or perennial ryegrass are being maintained, approximately 80% of the total nitrogen will be applied in appropriate split applications between the dates of August 15 and December 31, with the remainder to be applied from May 15 to June 30 of each year. The application amounts and timing will be in general agreement with Virginia Polytechnic Institute and State University Publication MA 168 entitled "Fertilizer Programs for Maintaining Kentucky Bluegrass and Tall Fescue."

3. Where bermudagrass or zoysiagrass is being maintained, the nitrogen will be applied in appropriate split applications between the dates of March 1 and August 1 of each year. The application amounts and timing will be in general agreement with Virginia Polytechnic Institute and State University Publication MA 169 entitled "Fertilizer Programs for Maintaining Bermudgrass and Zoysiagrass."

4. Corrective and maintenance phosphorus and potassium fertilizer will be provided as indicated necessary by the soil test submitted with this specification and by subsequent soil tests.

5. Bid Quotation for D. Fertilization: $ _____ Per Service

E. Herbicide Applications:

1. Preemergence herbicide for control of annual grassy weeds shall be applied as recommended in the current issue of Virginia Polytechnic Institute and State University Publication PMG 1 (or PMG 13) entitled "Chemical Control of Insects, Plant Diseases and Weeds", and in accordance with the label instructions. In newly overseeded areas, preemergence herbicides that allow continuing germination of turf seed shall be utilized.

2. Herbicide applications for control of existing broadleaf weeds will be made with herbicides or herbicide mixtures recommended in the current issue of Virginia Polytechnic Institute and State University Publications PMG 1 (or PMG 13) entitled "Chemical Control of Insects, Plant Diseases and Weeds" in accordance with label instructions.

3. Non-selective and/or preemergence herbicides shall be applied to cracks in paved areas as necessary for weed control.

4. All herbicides will be applied under the supervision of a Certified Pesticide Applicator. The contracting company accepts total responsibility for injury to ornamental plants that may result from herbicide applications.

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5. Bid Quotations for E. Herbicide Applications:

Preemergence (Item 1)	$ _____	Per application
Broadleaf (Item 2)	$ _____	Per "
Non-selective (Item 3)	$ _____	Per "

F. Lime Application:

1. *(Agricultural ground limestone/pelletized agricultural ground limestone – See Appendix, note 3)* shall be uniformly distributed at an application rate of 50 lb/1000 square feet, and at 60-day intervals, until the total amount indicated necessary by soil test analysis is applied.

2. Bid Quotation for F. Lime Application: $ _____ Per application

III. Accessory Maintenance Specifications

A. Fungicide Application:

1. Fungicide applications to prevent common turfgrass diseases from causing serious damage shall be provided on a (preventive/curative-See Appendix note 4) basis when agreed between contracting parties. Disease control prescribed shall be achieved utilizing materials recommended in the current issue of Virginia Polytechnic Institute and State University Publication PMG 1 (or PMG 13) entitled "Chemical Control of Insects, Plant Diseases and Weeds," and in accordance with the label instructions.

2. Bid Quotations for A. Fungicide Application:

Helminthosporium	$ _____	Per application
Rhizoctonia Brown patch	$ _____	Per "
Dollar Spot	$ _____	Per "
Fusarium Blight	$ _____	Per "
Snow Mold	$ _____	Per "

B. Insecticide Applications:

1. Insecticide applications to prevent common turfgrass insects from causing serious damage will be provided on a (preventative/curative – see Appendix note 4) when mutually agreed upon by contracting parties.

2. Insect control prescribed will be achieved utilizing materials and rates recommended in the current issue of Virginia Polytechnic Institute and State University publications PMG 1 (or PMG 13) entitled "Chemical Control of Insects, Plant Diseases and Weeds," and in accordance with the label instructions.

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3. Bid Quotations for B. Insecticide Applications:

White Grub	$ _____	Per application
Chinch Bug	$ _____	Per "
Cutworm, Armyworm, and Sod Webworm	$ _____	Per "
Billbug	$ _____	Per "

C. Aeration:

1. Aeration shall be accomplished utilizing a roller, drum or piston-type aerator with coring or open-spoon tines of ½ to ¾" diameter. Tines will penetrate the soil to a minimum depth of 1 ½ inches. Final aeration pattern will provide a minimum of 4 aeration holes per square foot of surface area. Aeration cores (will / will not) be collected (see Appendix Note 5).

2. Aeration shall be provided: (See Appendix note 5)

Between _____ and
(date) *(date)*

Between _____ and
(date) *(date)*

3. Bid Quotations for C. Aeration: $ _____ Per service

D. Dethatching: (See Appendix note 6)

1. Dethatching shall be done as needed to maintain thatch levels less than ½" thick.

2. Dethatching blades will be adjusted so as to not cause damage to the turf or detract from the quality of the turf two (2) weeks after dethatching.

3. Debris brought to the surface in the dethatching process shall be removed and disposed of off-site.

4. Dethatching shall be performed:

Between _____ and
(date) *(date)*

Between _____ and
(date) *(date)*

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5. Bid Quotation for D. Dethatching: $ _____ Per Service

E. Overseeding:

1. Overseeding of designated cool-season turf areas shall be accomplished from August 15 to September 30 or February 15 to March 30 utilizing a device or system which places the seed in direct contact with the soil.
2.
3. Dethatching shall precede overseeding of areas as noted in section D above when thatch buildup exceeds ½" thickness.
4. Cool-season turfgrass areas to be overseeded will be seeded utilizing blends or mixtures recommended by the Virginia Polytechnic Institute and State University publication MA 199 entitled "Species and Mixtures for Lawns and General Turf Areas." All Kentucky bluegrass and tall fescue mixtures will contain the Maryland-Virginia Recommended Label.

5. Rates for overseeding existing turf areas:

	Rate (1b/1000 sq. ft.)	
Seed being planted	If area has greater than 50% turf cover	If area has less than 50% turf cover
Kentucky bluegrass	1	2
Tall fescue	3	6

6. Bid Quotation for E. Overseeding:

Kentucky bluegrass @ 1 lb.	$ _____ Per 1000 Sq. ft.
Kentucky bluegrass @ 2 lb.	$ _____ Per "
Tall fescue @ 3 lbs.	$ _____ Per "
Tall fescue @ 6 lbs.	$ _____ Per "

IV. RESPONSIBILITY SPECIFICATIONS

A. Labor and Material:

1. Contractor agrees to furnish all labor, machinery, fertilizer, seed, sprays, etc. which are reasonably necessary to perform grounds maintenance in accordance with these specifications.

2. All machines will be of such type as to cause no hazard or danger reasonably foreseeable.

3. All material will be of such type and quality as to do the prescribed job without damage to existing desirable vegetation.

4. All personnel will be properly trained, licensed and conduct work in a professional manner with minimal disturbance to the contracting party.

B. Contractor's Responsibility:

1. Contractor agrees to adhere to these Specifications in performing the work required.

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Utilizing his/her best expertise and initiative, make any management recommendations to the contractee that will enhance the appearance of the grounds.

2. Contractor agrees, in the performance of this contract, to require all employees to comply with the instructions pertaining to conduct and building regulations, issued by duly appointed officials, such as the building inspectors, manager, etc.

3. Contractor shall, at its cost and expense, maintain during the term of this agreement, amounts of insurance that are deemed mutually adequate by the contracting parties.

4. The contractor shall, during the term of this agreement, comply with all pertinent federal, state and local ordinances and regulations.

5. The contractor shall be available for periodic inspections of the site at request of the contractee.

6. The contractor shall have a competent foreman in charge of the working crew at all times, and shall provide a monthly statement of services rendered.

C. Period of Contract and Payments:

1. This contract shall cover ___*(length of time)*___, commencing on __*(date)*__ and ending on *(date)*. The contractee agent and/or the contractor can terminate this agreement for just cause after a 30-day notification period.

2. Payments to contractor shall be made in equal *(frequency of payment–monthly, etc.)* installments beginning on ___*(date)*____.

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BID SUMMARY

Operation	Bid Per Service	Bid Per Contract Period
I. Basic Maintenance Specifications		
A. Mowing and Trimming	$_____	$_____
B. Edging	$_____	$_____
C. Leaf Collection	$_____	$_____
D. Fertilization	$_____	$_____
E. Liming	$_____	$_____
F. Herbicide Applications:		
Preemergence (Item 1)	$_____	$_____
Broadleaf (Item 2)	$_____	$_____
Non-selective (Item 3)	$_____	$_____
	Basic Maintenance Total	**$_____**
II. Accessory Maintenance Specifications		
A. Fungicide Applications:		
Helminthosporium	$_____	$_____
Rhizoctonia Brown Patch	$_____	$_____
Dollar Spot	$_____	$_____
Fusarium Blight	$_____	$_____
Snow Mold	$_____	$_____
B. Insecticide Applications:		
White Grub	$_____	$_____
Chinch Bug	$_____	$_____
Cutworm, Armyworm, and Sod Webworm,	$_____	$_____
Billbug	$_____	$_____
C. Aerification	$_____	$_____
D. Dethatching	$_____	$_____
E. Overseeding (Per 1000 Sq. Ft.)		
Kentucky Bluegrass @ 1 lb.	$_____	$_____
Kentucky Bluegrass @ 2 lb.	$_____	$_____
Tall Fescue @ 3 lbs.	$_____	$_____
Tall Fescue @ 6 lbs.	$_____	$_____
	Accessory Maintenance Total	**$_____**
	Contract Total	**$_____**

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APPENDIX

Note 1: Table 1. Recommended mowing heights for various turfgrasses.

Turfgrass	Mowing Height (in inches)		
Kentucky bluegrass	1-1/2	to	2-1/2
Tall fescue	2	to	2 ½
Creeping red fescue	2	to	2 ½
Bermudagrass	½	to	1
Zoysiagrass	¾	to	1

Reel mowers provide the highest quality of cut, but are the most expensive to maintain. Rotary mowers are most commonly utilized. Flail mowers generally provide a lower quality of cut than either reel or rotary mowers.

Note 2: (deleted)

Note 3: Choose either agricultural ground limestone or pelletized agricultural ground limestone, both of which are acceptable liming materials. Lime dust can be offensive if applied in windy conditions. Pelletized agricultural ground limestone does not produce as much dust but generally costs more than agricultural ground limestone.

Note 4: Choose either preventive or curative:

Preventive: implies an extensive spray program which could be necessary as frequently as every 7 to 10 days with fungicides, or every 25 to 30 days with insecticides.

Curative: implies spraying only when the disease or insect is active and threatens to seriously damage the turfgrass.

Note 5: In most situations it is desirable to not collect the cores. Aeration cores tend to reinoculate the thatch layer and promote thatch decomposition. Where traffic is excessive, additional aerification treatments may be prescribed.

Aeration is generally most beneficial on cool-season grasses when provided between August 15 and November in association with overseeding and fall fertilization. On warm-season grasses such as bermudagrass and zoysiagrass it is generally most beneficial during summer months from June 15 to August 15.

Note 6: Thatch control is best accomplished with a preventive program in which dethatching is done periodically to avoid excessive build-up. In the event that

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thatch has accumulated to an undesirable thickness, repeated dethatching at a light or moderate rate to avoid excessive damage to the turf is preferred.

Dethatching should be limited to the seasons in which grass is growing rapidly, and done in such a manner that the turf will recover in 2 weeks. The appropriate time period for cool-season turf dethatching is either between April 1 and June 1 or August 15 and October 15, depending upon geographic location.

In cooler regions of Virginia, May or August are appropriate, whereas in the hotter regions, April and September are more appropriate. Bermudagrass and zoysiagrass should be verticut early in the summer after these grasses have completely greened up and are vigorously growing.

ACKNOWLEDGEMENTS

The assistance of commercial lawn maintence professionals and citizens of Fairfax County was necessary for development of this publication. Suggestions from other lawn maintenance professionals and Extension Specialists have also been valuable in the development of these guidelines.

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Privately Owned Best Management Practice (BMP) "Wet Pond" Facilities:[26]

Rain happens... and the impact of developments on the natural drainage patterns is readily apparent. Vast, impervious surfaces dramatically increase stormwater runoff, which can result in downstream erosion, flooding and sedimentation. Developed lands also introduce "non-point source pollution" consisting of sediment, phosphorous and fertilizer nutrients, motor oils and petroleum derivatives, lawn and garden chemicals, trash and natural debris, and anything else washed from the developed areas and streets into local streams. A variety of laws, including the Virginia Chesapeake Bay Preservation Act, the Virginia Stormwater Management Act, and the federal Clean Water Act encourage or require control of this non-point source pollution. An important tool of stormwater management is the retention basin or "wet pond." Generally known as "BMPs," these dual-purpose structures (along with other BMP types) have become commonplace throughout Northern Virginia.

Retention Basins (or wet ponds) are excavated basins and natural valleys or depressions with a constructed impoundment dam that retains a permanent pool of water much like a lake or natural pond. This impoundment temporarily stores storm water above the elevation of the permanent pool allowing sediment and pollutants carried by the runoff to settle to the bottom. The storm water is released through a restrictive or controlled outlet structure and returned to the natural drainage channel at a slow rate to prevent downstream flooding and erosion. These facilities also improve water quality by reducing the non-point source pollutants, which helps to protect downstream water supplies and aquatic life. Wet ponds have an emergency (overflow) spillway, usually at one side of the impoundment dam, to release stormwater that exceeds the designed storage capacity of the pond. Without this overflow control, impounded runoff from an intense storm event could overflow the earth impoundment dam, causing erosion, damage to the outlet structure, or cracking and/or failure of the impoundment dam.

The County Department of Public Works and Environmental Services (DPWES) is responsible for maintaining all "dry ponds" (similar to wet ponds but without a permanent pool) in the County, therefore, further discussion of this BMP type is not warranted. However, except for very large BMPs classified as "regional basins," DPWES does not maintain wet ponds. Current County policy requires that wet ponds, if built to serve residential developments, must be constructed on community association common land and are the financial, legal and maintenance responsibility of the association. Regardless of how well designed and constructed, BMPs will not continue to provide temporary stormwater storage and water quality improvement if not properly maintained.

When the storage capacity or outlet release rate of a BMP is reduced by lack of maintenance, overflow through the emergency spillway and/or downstream flooding are visible evidence of the problem. If, however, the facility is not removing sediment and pollutants, there may be no obvious indicators. A consistent maintenance program is the best way to ensure that a

[26] Maintaining BMPs - A Guidebook for Private Owners and Operators in Northern Virginia, pub. by Northern Virginia Planning District Commission in cooperation with the U.S. Environmental Protection Agency and the Virginia Department of Conservation and Recreation, Fairfax, VA, February 2000.

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BMP continues both functions as designed. General maintenance tasks can be outlined, but the actual needs and frequency vary according to specific site conditions and the following elements:

- Visibility and Appearance of the BMP The needs and preferences of the adjacent residents affect the type and amount of "aesthetic" maintenance.

- Landscaping While the needs and care of landscape materials and groundcover vary widely, the health of grasses and other filtering vegetation surrounding a BMP is critical.

- Upstream Conditions The conditions and type of land use upstream from a BMP facility will largely determine the amount of sediment and pollutants that the facility must intercept and manage. Routine observation and reporting of erosion or other sediment-causing land disturbances can reduce the impact on a downstream BMP.

- Safety A maintenance program must ensure the safety of anyone carrying out maintenance tasks. Some work can be done by non-technical staff or resident volunteers, (i.e., trash and debris cleanup along the BMP shoreline), however, trained and insured professionals should be contracted whenever the work is within the pond, poses a safety hazard, or requires specialized equipment/experience.

- Professional Judgment Some problems may not be obvious to an untrained eye, and the judgment of a professional should be consulted to ensure that all maintenance needs of a BMP facility are considered and met.

- Maintenance Financing A reserve fund should be established to provide for the costs of long-term maintenance needs such as sediment removal, which can be considerable depending upon the size of the BMP and other factors.

Routine Maintenance Needs:

Inspections - Virginia's Stormwater Management Regulations require twice-yearly inspections, and after any storm event that exceeds the capacity of a BMP, to ensure that the facility remains operational to the designed capacity. Although a particular schedule for inspections is not required, one of the annual inspections should be by a qualified, knowledgeable professional. Wet ponds have several maintenance concerns, and the use of an inspection checklist is advisable. As a minimum, a BMP pond inspection should include the following items:

- inlets/outlets for obstructions by trash and/or natural debris;

- embankments and drainage channels for excessive erosion, or sedimentation in the pond and the stream bed below the outlet structure;
- the impoundment dam for cracking, settling or erosion, and for deterioration and erosion around the outlet structure;

- low spots in the bottom of an extended detention facility (dry pond);

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- deterioration and or clogging (soil or vegetation) of outlet pipes;
- condition of the emergency spillway, including erosion or soil sloughing, excessively tall or no grass cover, growth of woody plants and trees;
- stability of side slopes, and upstream and downstream channel conditions;
- signs of vandalism, trash or yard waste dumping, or other obvious problems.

Vegetation Maintenance - Grass is usually established on the banks and slopes around both types of pond basins and in the bottom of dry ponds. Grass minimizes or prevents soil erosion, and it filters sediment from runoff before it enters the pond. Grass may be hardiest if maintained as an upland meadow no shorter than 6" – 8". Some communities prefer a more manicured appearance. Regardless of the aesthetic desires, mowing and fertilizer requirements must be tailored to the specific needs and conditions of each BMP site to maintain grass in good health and condition. Generally, the shorter and more manicured the grass is kept, the greater the mowing and fertilizing attention required, and the higher the cost. Over-fertilizing adds nutrient pollution to the pond water and should be avoided. Keeping the impoundment dam free of woody vegetation and trees is critical to the structural integrity of the dam. State and local safety standards exclude woody trees on structural dam embankments. They do not do well in the basins and make sediment removal more difficult and costly but on the non-critical banks and slopes such vegetation compliments the landscape aesthetics.

Debris and Litter Removal - Community clubs or volunteers can accomplish routine removal of natural debris, windfalls, trash and litter. Special attention should be given to removal of floating debris, which can clog an outlet culvert, riser or trash rack. Regular removal of debris, litter and trash from BMP basins maintains the pond functions and benefits the maintenance program by reducing the chance of clogging in outlet structures, trash racks, and other components of the facility. It also prevents damage to vegetated areas, improves the facility appearance, and reduces the conditions for excessive surface algae and/or mosquito breeding.

Mechanical Components Maintenance - Some BMPs have mechanical components that need routine attention to ensure continued performance; valves, sluice gates, pumps, fence gates, locks and access hatches should always be operational. An association's maintenance staff should be thoroughly knowledgeable on the functions, maintenance needs, and operation of these mechanical devices, and should prepare a schedule for inspection, testing and repairs or replacements.

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Insect Control - Mosquitoes may not be as big an issue as generally perceived. Because breeding conditions are created by stagnant water, there are acceptable ways to avoid the problem. The best control in wet ponds is to ensure that the permanent pool of water is exchanged with each storm and thus does not become stagnant. Regular removal of floating debris, particularly around outlet structures, facilitates exchange with fresh incoming stormwater, eliminates pockets of still surface water that can become stagnant, and washes insect larvae downstream. In larger basins and small lakes, it may be possible to add fish that feed on mosquito larvae.

Non-Routine Maintenance - An important non-routine wet pond maintenance factor is a healthy aquatic environment that requires regular monitoring but very little in the way of actual maintenance. A frequent problem is excessive algae growth in the permanent pool and is evidence of over-fertilizing upstream and/or on the banks and slopes of the pond itself. Fertilization schedules, rates, and procedures, should be carefully reviewed to assure only the minimum necessary fertilizer application for healthy vegetation. Desirable aquatic and semi-aquatic vegetation in and around the permanent pool will cause excess nutrients to be taken up and will greatly reduce the amount of algae in the pond. Consultation with a professional aquatic biologist will result in better pond function and appearance with less maintenance cost.

Bank Stabilization - The integrity of the banks and bottom of BMP ponds is very important and the associated routine maintenance program should aim at keeping a healthy vegetative ground cover on these areas. Exposed bare soil or poor quality ground cover can be quickly eroded by rainfall and overland runoff and the resulting sediment will wash directly into the basin, clogging the outlet structure and increasing the frequency of costly sediment removal. Although collection of sediment is one of the primary functions of wet and dry ponds, prevention of sediment at its source by maintaining a healthy grass cover is the lowest-cost primary goal. Trees, woody shrubs and understory growth can destabilize embankment areas by overshading and preventing healthy growth of protective grass cover. Maintenance personnel must be biologically and horticulturally experienced to achieve and maintain proper aquatic and vegetative environments in and around BMP ponds. Animal burrows can also deteriorate the integrity of pond embankments. Muskrat and beaver tunnels can start erosion, undermine trees, and collapse embankments. Environmental, wildlife and conservation specialists can be helpful in controlling excessive animal burrowing while protecting desirable wildlife habitats.

Sediment Removal - Since one of the purposes of BMPs is the removal of sediment from stormwater runoff, the accumulation eventually needs to be removed. Because BMP facilities vary dramatically in size, depth, upstream conditions, and many other factors, there are no "rules of thumb" covering the frequency of sediment removal. For planning and budgeting purposes, sediment removal should be considered at 5 to 15 year intervals for wet ponds. Sediment removal is the largest single cost of maintaining a BMP, and

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this varies enormously due to the amount of sediment, whether it is wet or dry, and disposal requirements. An on-site disposal area outside of the floodplain has the least transportation factor and no dumping or "tipping fee." After spreading, drying and regrading, the sediment area can be seeded and stabilized with grass and/or wild flowers.

Wet sediment is more difficult and expensive to remove and dispose of than dry sediment. If the facility can be entirely drained and allowed to dry, heavy equipment can more easily remove the sediment with minimum time, involvement and cost. In other cases, hydraulic dredging or other methods may be required. Wet sediment is not allowed in many landfills and must be dried or "dewatered" prior to disposal. This additional step requires a place where the wet material can be temporarily spread out to dry. Immediately after sediment removal, cleaning of the outlet structure, and all other operations within the pond, the disturbed banks and slopes must be stabilized and vegetated to retard new sedimentation of the pond.

Infiltration trenches, another but seldom used type of BMP, become clogged with sediment more quickly than do ponds, and two to four inspections per year are recommended. Most trenches have grass or other filter and/or sediment traps to remove much sediment before it enters the trench storage. Keeping the sediment filter clean is essential to long-life operation of the trench. Although required more often than for wet ponds, the costs are significantly less. If a trench regularly overflows and remains filled with water after a storm, the aggregate stone must be excavated and the facility rebuilt. The advice of an experienced maintenance engineer is suggested.

Maintenance Cost Estimating - The maintenance needs of BMPs are site and facility-specific, and the costs will vary accordingly. Maintenance needs such as regular field observation and erosion/sedimentation reporting, debris and trash removal, mowing, and landscape plant maintenance can be safely and cost-effectively done by residents or the association's maintenance staff. It is usually worth the cost to contract with professionals to do the more difficult, time-consuming work. Safety, cost and effectiveness need to be balanced and cost estimates prepared using general BMP maintenance parameters to plan for these requirements and their financial impact on the association's budget. Routine and non-routine costs should be estimated and evaluated separately, since they can vary considerably.

Routine maintenance includes inspections, debris and litter control, mechanical components maintenance, landscape vegetation management, and other regular tasks required by the specific BMP facility. A survey of ten Washington Metropolitan area lawn and grounds maintenance services estimated routine maintenance costs between $100 per acre per year for mowing and fertilizing only, to $500 per acre per year for mowing, fertilizing, litter control, sodding, and insect control. Because labor is usually the largest single cost factor for grounds work, volunteers from the community can make a big difference, however, the association cannot ignore safety and liability considerations when volunteers are involved.

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Non-routine maintenance of BMPs according to the type, size and depth of the facility, the volume of sediment to be removed, its wet or dry condition, the equipment and method required for removal. On-site disposal of excavated sediment, equipment accessibility to the BMP, repair and/or replacement of outlet structures, and any repair of the emergency spillway are additional cost considerations.

The type of equipment and work to be performed, size of the facility, and the personnel required to excavate and remove sediment from a BMP have a significant impact on the cost of mobilization and demobilization (getting the operation on and off site). For small wet ponds that can be drained and excavated or dredged from the shore and extended dry ponds, a land-based perimeter operation will usually suffice. Typical mobilization/demobilization costs for this simple type of removal operation range from $3,000 to $5,000 for a one-acre pond. Wet pond basins too large to be excavated or dredged from the shoreline often require a crane and bucket or a hydraulic excavator to be mounted on a floating barge. The mobilization/demobilization cost for this type of operation can be up to $10,000 in the Washington Metropolitan region.

Dredging - The approximate cost of dredging and removing sediment from a BMP is proportional to the total volume (in cubic yards) to be removed, and is usually calculated by the following formula:

$$V = A \times \frac{43{,}560 \times D}{27}$$

where: V = volume in cubic yards;

A = area (in acres) of sediment surface, (not water surface);

D = thickness (in feet) of sediment to be removed,
(43,560 sq. ft. per acre; 27 cu. ft. per cu. yd.)

The thickness of sediment to be removed may be difficult to measure because the sediment surface is not usually visible and the depth varies with the shape of the pond bottom. It may be more practical to apply a uniform thickness of 6, 12, or 18 inches to be dredged without concern about the original bottom elevation and contour. A cubic yard is the standard unit of measure for dredging, and to which contractors apply a unit cost to arrive at a bid price for the proposed work. The unit cost for dredging ranges from $6 to $15 per cubic yard and is largely influenced by: 1) mobilization and type of equipment needed; 2) the depth of water above the sediment surface, 3) site restrictions; 4) the hauling distance to the "staging area" where the sediment is transferred to trucks; and other factors such as labor, workload schedule, and seasonal conditions.

Disposal - The primary determinant of sediment disposal costs is whether an on-site disposal or "spoil" area is available. Total disposal costs must include such factors as

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total material volume, number of trucks to be used, transportation distance, whether the material must be spread and dried before final disposal, and any "tipping" fees at a landfill site. In 1999, the Northern Virginia Planning District Commission estimated typical disposal costs of $47 per cubic yard ($37 for dumping, $10 for transportation, depending upon the above factors).

Planning Ahead – A Financial Reserve - The cost of maintaining a BMP wet pond retention basin that requires dredging and other non-routine maintenance can be considerable. The cost estimates for mobilization, dredging and disposal plus other specific repairs (i.e., outlet structure repairs, mechanical replacements, etc.) will establish a reasonable cost range for non-routine maintenance of a BMP. A reserve fund to lessen the financial impact of this non-routine maintenance reality is recommended. Approximately 6% to 20% of the anticipated costs should be accrued each year as part of the annual assessment.

Maintaining Your BMP, a comprehensive and detailed guidebook for private owners and operators of BMPs, published by the Northern Virginia Planning District Commission, Division of Environmental Services, is available in its entirety online at http://www.novaregion.org/pdf/Maintaining_BMPs.pdf. The following charts from this guidebook show the range of costs associated with sediment removal for various sized BMPs based on a survey in the Washington Metropolitan area. The last column (blank) can be used to estimate the maintenance costs of an association's BMP pond.

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Sample Self Inspection Checklist

STRUCTURAL INTEGRITY

Yes No N/A
Does the facility show signs of settling, cracking, bulging, misalignment, or other structural deterioration?

Yes No N/A
Do embankments, emergency spillways, side slopes, or inlet/outlet structures show signs of excessive erosion?

Yes No N/A
Is the outlet pipe damaged or otherwise not functioning properly?

Yes No N/A
Do impoundment and inlet areas show erosion, low spots, or lack of stabilization?

Yes No N/A
Are trees or saplings present on the embankment?

Yes No N/A
Are animal burrows present?

Yes No N/A
Are contributing areas unstabilized with evidence of erosion?

Yes No N/A
Do grassed areas require mowing and/ or are clippings building up?

WORKING CONDITIONS

Yes No N/A
Does the depth of sediment or other factors suggest a loss of storage volume?

Yes No N/A
Is there standing water in inappropriate areas?

Yes No N/A
Is there an accumulation of floating debris and/or trash?

OTHER INSPECTION ITEMS

Yes No N/A
Is there evidence of encroachments or improper use of impounded areas?

Yes No N/A
Are there signs of vandalism?

Yes No N/A
Do the fence, gate, lock, or other safety devices need repair?

Yes No N/A
Is there excessive algae growth, or has one type of vegetation taken over the facility?

Yes No N/A
Is there evidence of oil, grease, or other automotive fluids entering and clogging the facility?

Yes No N/A
In rain garden BMPs, is there evidence of soil erosion, does mulch cover the entire area, are specified number and types of plants still in place, or is there evidence of disease or plant stress from inadequate or too much watering?

OTHER OBSERVATIONS

_____

_____

_____

_____

_____

_____

A yes answer to any of these items should result in corrective action or a call to a professional inspector.

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Sample Wet and Dry Pond Sediment Removal Costs

Component	Surface Area .25 acre Low ⇩	Surface Area .25 acre High ⇩	Surface Area 1 acre Low ⇩	Surface Area 1 acre High ⇩	Surface Area 2 acres Low ⇩	Surface Area 2 acres High ⇩	Surface Area 10 acres Low ⇩	Surface Area 10 acres High ⇩	Work Space _____ acres Low ⇩	Work Space _____ acres High ⇩
Mobilization/ Demobilization/ Access Road	$1000	$2000	$3000	$5000	$5000	$7000	$5000	$10000		
Dredging*	$1613 ($8/cy)	$3025 ($15/cy)	$12090 ($15/cy)	$16120 ($20/cy)	$24195 ($15/cy)	$32260 ($20/cy)	$120990 ($15/cy)	$161320 ($20/cy)		
Disposal (Onsite/Offsite)	$1008 ($5/cy)	$9478 ($47/cy)	$4030 ($5/cy)	$37882 ($47/cy)	$8065 ($5/cy)	$78811 ($47/cy)	$40330 ($5/cy)	$379102 ($47/cy)		
Total Cost	$3612 to $15003		$19120 to $59002		$37260 to $118071		$166320 to $550422			
Typical Equipment	Backhoe		Truck Equipment (1) Loader/Dozer (2) Crane Dragline or Clambucket							

*Dredging calculations assume a sediment accumulation of 6 inches. Costs will vary according to sediment depth. Estimated costs also assume that the facility is drained and that the silt is dewatered in place

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What Can You Do To Hold Down BMP Maintenance Costs?

Properly cared for, a BMP can work effectively for years without major maintenance costs. Abused, it can potentially be a continual financial drain. Businesses and homeowners associations can minimize costs and the potential liability of those responsible for BMP maintenance by promoting the following simple rules.

DO NOT!

- ☒ Dump used motor oil, antifreeze, or other oil and grease into storm inlets. This is a criminal offense.
- ☒ Dump grass clippings, leaves, soil, or trash of any kind into a BMP or a storm inlet. Leaves and grass clippings release bacteria, oxygen consuming materials, and nutrients. They will also clog BMP components.
- ☒ Dispose of pet wastes in the storm system – including grassy areas near a BMP. Animal wastes contain disease causing bacteria and release oxygen consuming materials.
- ☒ Wash dirty vehicles on streets or driveways. Whatever comes off the car ends up in the BMP.
- ☒ Overfertilize the lawn. Whatever washes off the lawn or impervious areas (such as driveways or sidewalks) drains into the BMP and shortens its life-span.
- ☒ Leave bare areas unstabilized. Erosion from bare soil results in sediments that can clog a BMP.
- ☒ Dispose of left over paint or hazardous materials into the storm drain. These materials can kill BMP vegetation and aquatic life. Dumping is also a criminal offense.

DO!

- ☑ Keep properties, streets, and gutters free of trash, debris, and lawn clippings.
- ☑ Provide information to those who maintain their own automobiles on where to recycle oil and antifreeze.
- ☑ Encourage residents to take dirty vehicles to a commercial carwash or select a location where water does not enter a storm drain.
- ☑ Put a pan underneath your car if it is leaking to catch the fluids until it is repaired. Spread an absorbent such as cat litter to soak up drippings and dispose of properly.
- ☑ Educate residents on where to properly dispose of hazardous wastes, including oil and latex paints.
- ☑ Plan lawn care to minimize the use of chemicals and pesticides. Sweep paved surfaces and put the sweepings back on the lawn.
- ☑ Limit the amount of impervious surfaces. For patios, walkways, and landscaping, consider porous pavements such as bricks, interlocking blocks, or gravel.
- ☑ Incorporate native trees, shrubs, and groundcovers to help the water soak into the ground. Select species that need little fertilizer or pest control and are adapted to specific site conditions.
- ☑ Sweep up and dispose of ice melting chemical residues in the winter. This will protect grass and other landscaping plants.

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BMP Resource Guide

LOCAL GOVERNMENT AGENCIES

Information on maintenance agreements and responsibilities.

Arlington County: Water, Sewers, and Streets Division ..... (703) 228-6485
City of Alexandria: Transportation and Environmental Services ..... (703) 838-4327
Town of Dumfries: Public Works ..... (703) 221-3400
Fauquier County: Community Development ..... (540) 347-8660
Town of Leesburg: Engineering and Public Works ..... (703) 771-2790
Fairfax County: Maintenance and Stormwater Management Division
Engineering Office ..... (703) 934-2860
Public Works ..... (703) 934-2800
City of Fairfax: Public Works, Stormwater Supervisor ..... (703) 385-7980
City of Falls Church: Public Works ..... (703) 248-5080
Town of Herndon: Public Works ..... (703) 435-6853
Loudoun County: Building and Development ..... (703) 777-0397
City of Manassas: Public Works ..... (703) 257-8378
City of Manassas Park ..... (703) 335-8820
Prince William County: Environmental Services ..... (703) 792-7070
Town of Vienna: Public Works ..... (703) 255-6381

SOIL AND WATER CONSERVATION DISTRICTS

Information on erosion and sediment control.

John Marshall SWCD (Fauquier County) ..... (540) 347-3120
Loudoun SWCD ..... (703) 771-8395
Northern Virginia SWCD (Fairfax County) ..... (703) 324-1460
Prince William SWCD ..... (703) 594-3621

VIRGINIA COOPERATIVE EXTENSION

Information on vegetation and landscape management.

Arlington County ..... (703) 228-6400
City of Alexandria ..... (703) 519-3325
Fairfax County ..... (703) 324-8556
Fauquier County ..... (540) 341-7950
Loudoun County ..... (703) 777-0373
Prince William County ..... (703) 792-6289

ADDITIONAL PUBLICATIONS

Planting and Preserving Trees in and around Stormwater Management Ponds (Fairfax County DPWES) ..... (703) 934-2860
How Does Your Garden Grow? A Reference Guide to Enhancing Your Rain Garden (Prince George's County, Maryland) ..... (301) 883-5935
Management of Virginia's Ponds for Fishing (Virginia Department of Game and Inland Fisheries) ..... (804) 367-1000
Simple Things You Can Do to Clean Up Our Urban Streams and the Chesapeake Bay (NVPDC) ..... (703) 642-0700
You and Your Land (NVSWCD) ..... (703) 324-1460

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Soil and Water Conservation Problems:

Many associations have common areas that include lakes, ponds, streams, dams and/or grounds that are subject to soil and water conservation problems. The Northern Virginia Soil and Water Conservation District (NVSWCD) in cooperation with the Virginia Cooperative Extension Service, the USDA Natural Resource Conservation Service, and the Virginia Division of Forestry assists community associations in identifying conservation problems. NVSWCD provides technical assistance in planning implementation programs to correct soil erosion and water problems and to improve grounds for recreation use. It assists associations in determining whether their members qualify to establish a Watershed Improvement District (WID). The potential advantage of a WID is that the costs of improving and maintaining qualifying common property can be assessed to association members by a real estate surtax that qualifies as both a federal and state income tax deduction instead of an association maintenance fee that is not tax deductible.

The NVSWCD sells plants and tree seedlings to associations that demonstrate a need for the materials to promote soil and water conservation. Normally, NVSWCD works with an association to establish its needs for plant materials and to develop a planting plan. The materials are ordered in the winter and delivered for planting in the spring. Each spring, in conjunction with the Fairfax County Park Authority, the Izaac Walton League of America, and the USDA Natural Resources Conservation Service, the NVSWCD sponsors a fish pond management seminar to assist associations that own and manage fish ponds. For information about their services, contact NVSWCD at http://www.fairfaxcounty.gov/nvswcd/default.htm or at (703) 324-1460.

Snow Removal:

Associations must provide snow removal for their private streets and parking areas. Historical records show that Fairfax County has had an average of five snow falls of more than one inch each winter, including one in December, two in January, one in February and one in March. Budgeting for snow removal can be a problem because snow removal costs can be significantly affected if the number of snow falls deviates from this norm, if the snowfalls are unusually deep, or if the weather conditions accompanying the snow require extensive sanding or salting of the streets. Snow removal companies are listed in the Yellow Pages of the telephone directory, and snow removal services are also offered by refuse collection firms, construction companies, etc., that have equipment convertible for use as snow plows. There are three basic types of contract arrangements used for snow removal services in this area:

- Flat fee or "insurance" contracts - A flat fee is charged for all snow removal for an entire season. If there are more snowfalls than usual, the association "wins;" with few snowfalls the contractor "wins." While this provides a set figure for snow removal expenses, in unusually severe winters the contractor may find it is unable to provide the services at the

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contracted price. This may leave the association with unplowed streets, ensuing legal expenses, and/or having to arrange for alternate plowing sources after each snowfall.

- Hourly contracts – An association is guaranteed that its streets will be plowed automatically after 2 or more inches of snow have fallen. The association is billed at an hourly rate established in the contract (a two hour minimum billing is often required).

- Retainer contracts – The association pays a flat fee based on estimated costs against which snow removal services are charged as they are performed. Services rendered above this amount are separately billed.

When contracting for snow removal services, the contracting procedures discussed in Chapter 3 should be followed. An experienced snow removal contractor can usually provide an association with an accurate estimate of the cost of snow removal per snowfall based on the type of terrain, the size of the area to be cleared and the depth of snow usually accumulated. It is helpful to the contractor, particularly if the community has a parking lot, for the association to submit a sketch of the development indicating where it wants or does not want snow piled. The association should also provide the contractor with the names and telephone numbers of association representatives to contact if an emergency or problem arises.

Sanding and Salting - The advisability of applying salt, sand, or a sand/salt combination to streets to provide traction and melt ice is controversial. Such materials, although effective, are expensive and salt can prove damaging to asphalt and vegetation near the edges of the pavement. Sand provides traction but has no melting capability, and once applied it must be swept or otherwise removed in spring. A sand/salt combination is often recommended as being more efficient than sand and less destructive than salt. Sometimes a sodium chloride/calcium chloride salt mixture is used with sand as this is thought to be less destructive to pavements. Safety, however, must be an association's primary concern. Some associations have hills or areas which become hazardous and always require sanding or salting. Other associations determine whether sanding or salting is necessary on an occurrence basis (e.g., presence of ice, likelihood of rapid melting, etc.)

Clearing Walkways - Not all snow removal firms clear sidewalks. As an alternative, an association can hire local youths or use its maintenance personnel to remove snow from sidewalks for which the association is responsible. One snow removal contractor suggested that associations use urea (a nitrogen compound used for lawn fertilization) on icy sidewalks rather than salt or sand. Although expensive, urea provides traction, is a good melting agent and has the added advantage of being beneficial to the grass and shrubs along the walkway.

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Streets and Paved Areas:

Pavement maintenance and repairs of private roads, parking areas, and sidewalks of an association are usually a major expenditure because the size of areas, type of materials and equipment needed, and frequency of routine maintenance requires professional expertise. The life span of the streets and other paved areas depends upon the initial construction, drainage, annual climatic factors, and the type and amount of use. Most public streets in Fairfax County are owned and maintained by the Virginia Department of Transportation (VDOT). Fairfax County provides maintenance to a very limited number of public roads on an interim basis until they are upgraded and accepted into the VDOT State Secondary System for maintenance. VDOT does not maintain subdivision streets unless they have been constructed according to VDOT standards and are dedicated to public use, and are accepted into the VDOT systems of roads. County tax funds are not used for VDOT public road and street maintenance; most state road maintenance is funded from the state's gasoline tax. Small four digit rectangular signs posted at corners readily identify state roads. For information regarding maintenance of public streets, contact VDOT at (703) 383-8368 or at http://virginiadot.org/quick/nova_quick.asp.

In some communities, some or all of the streets, including the road pavement, curbs and gutters, and sidewalks are privately owned and maintained by the association. Since the early 1960s, Fairfax County has required that private residential streets be designed and built according to minimum standards to assure that they are adequate to serve the community for which they are designed. The County requires developers and builders to post a bond with the County, which guarantees the installation of a development's streets and other public improvements in accordance with County standards. County standards for street construction are based on a formula that estimates the average traffic the street will carry. The formula assumes an average daily traffic flow of five to seven vehicles trips per residence, and includes provisions for increased traffic due to the location of schools, parks, fire facilities, commercial development, etc. It assumes that heavy commercial trucks (i.e., two axles and six tires or heavier) will be 5% or less of the total daily traffic.

Life Span of Paved Areas - The life span of an association's streets will depend upon the quality of construction and the degree of maintenance they receive. A properly constructed and maintained street should last at least 20 years before major reconstruction is required. Street durability may be affected if construction occurs in other sections of the subdivision serviced by a street or if the number of trucks exceeds the 5% estimate. If traffic remains within the limits for which the street is designed, the need for major maintenance expenditures such as for resurfacing should not be necessary for the first 8-10 years. However, all paved surfaces require routine maintenance. Changes in temperature, moisture, freezing and thawing, as well as normal traffic will cause cracks, holes and general deterioration of the surface of streets, parking areas, and walkways.

Pavement Maintenance & Surface Treatments - Pavement maintenance usually consists of i) periodic surface treatments to replace asphalt worn away by traffic and weather, and ii) timely repair of surface defects, cracks and small pot holes to prevent major failures.

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Regular inspection of the pavement is essential to detect problems. Sealing and resurfacing are the two main types of surface treatment for asphalt pavements. Sealing refers to a thin layer of asphalt or other emulsion spread on the pavement surface to prevent the absorption of moisture into the road surface and to improve its appearance. Some sealing compounds prevent the surface from being softened by oil and gas from vehicles. The two most common types of seal used in this area are:

- Seal coat or fog seal - a thin layer of an asphalt emulsion or coal tar emulsion and water applied to the surface at a rate of 0.1 to 0.2 gallons per square yard. It is the least expensive surface treatment and normally lasts two years before deterioration by weather and traffic.

- Slurry seal – a mixture of an asphalt emulsion, fine aggregate such as a fly ash or mineral filler, and water. It is more expensive than a seal coat, but lasts an average of 4-5 years. A contract for slurry seal should specify compliance with VDOT specifications.

Some engineers feel that surface sealing, especially with a slurry seal, postpones the need for resurfacing by preventing the penetration of moisture into the surface. Others feel that it is more economical to resurface a pavement when moisture penetration and cracking occur. Resurfacing refers to a new (1" minimum) hot-mix bituminous concrete asphalt surface ("SM-5" VDOT specification) applied over a properly patched and prepared existing pavement. An asphalt course of less than one inch thickness tends to dry out and deteriorate more rapidly, and may not fill or cover previous ruts, depressions and/or pot holes. Repeated applications raise the level of the street, which affects the drainage rate, and manholes, curb inlets, and other structures might need to be raised. Alternatively, the old and cracked surface can be "milled" (removed) to restore the original elevation upon the addition of the new surface course. Milling is an additional expense but may be less than the cost of raising manholes, curb inlets, and other structures. Sometimes a bituminous "tack coat" must be sprayed on the old surface to improve bonding of the new asphalt. The new, durable, smooth surface should last 8-10 years. An association should consider several professional opinions and compare cost estimates before contracting for a specific application.

Repairing Pavement Defects - The most common types of pavement defects are cracking, surface raveling, and potholes. Cracking includes:

- Alligator cracks – Alligator cracks form a pattern similar to that of alligator skin, and generally indicate poor drainage of ground water in the earth sub-base.

- Edge cracks – Edge cracks appear along and parallel to the edge of the pavement surface, indicating settlement or shifting of base material under the cracked areas, generally due to insufficient compaction.

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- Shrinkage cracks – Shrinkage cracks are often caused by asphalt or bituminous material that does not "give" with temperature changes. Shrinkage cracks less than 1/8 inch will often knead together from traffic use, otherwise a sealer can be applied to fill the cracks. Wider cracks can be cleaned of loose material with an air jet nozzle, then filled with a rubber or polymer sealant to seal the crack. Lay persons or maintenance staff can perform this repair using products commonly available from building supply firms.

- Joint cracks – Joint cracks occur at a point where two sections of paving material meet, and are most often caused by moisture seeping into the joint, preventing proper bonding of two sections of pavement materials.

- Root cracks – typically in a random, branching pattern, occur when the roots of nearby trees grow under the pavement. As the roots grow in diameter, they create great upward pressure cracking the asphalt, often raising it above the adjacent surface.

Temporary or permanent patching can treat cracks. Temporary patching does not correct the cause but will prevent further deterioration due to water seeping into the crack. It involves applying and compacting a "skin" patch of asphalt material to the cleaned surface area around the crack. Permanent patching entails cutting out the cracked area, removing loose materials, improving the drainage (if necessary), and refilling and compacting the damaged area with fresh asphalt. A raveled surface is a separation of the aggregates, generally caused by inadequate initial compaction, improper asphalt mix, or inadequate temperatures during construction. If in an early stage of raveling, a seal coat may prevent further raveling. Advanced raveling requires a slurry seal application. Competent professional advice is the best first step. Potholes indicate a weakness in the pavement from poor sub-drainage, inadequate compaction of the base material, and/or an improper asphalt mix. Potholes can be temporarily repaired by removing loose materials and filling the hole with premixed patching material. New base and high-quality hot-mix material provides the most permanent and cost effective repair.

Pavement and Traffic Line Marking: - Road and street maintenance also includes painting lines for parking spaces, cross walks, fire lanes, and center and edge striping. The frequency with which this needs to be done varies with the amount of traffic, the quality of the asphalt surface, and the quality of the paint used. Traffic paints generally last between three and five years. The cost of pavement marking is based on the size of the job and the types of marking desired. The painting of new lines is more expensive than painting over existing lines. An association should know whether preparation costs for sweeping and/or hosing the surface are included in the cost estimate or separately charged. The paint used should meet federal specifications for traffic paints.

Sidewalks, Curbs, Gutters - Sidewalks, curbs and gutters are normally concrete, and if properly constructed with a good foundation, may last 50 years. The life expectancy of

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concrete depends on many variables, including the weather conditions during construction, the sub-base grading, base materials used, the type and strength of concrete used, finished surface drainage, and any excessive loading and damage from heavy equipment and vehicles such as dump trucks and moving vans. Concrete is subject to three common problems – cracking, upheaving and spalling. Cracking and upheaving are usually caused by inadequate drainage under the base – the water freezes, expands, and heaves the concrete upward. Spalling is a deterioration of the concrete surface due to poor surface finishing when constructed and/or subsequent salting on the concrete to remove snow and ice. The cost to remove and replace damaged concrete depends on the size of the job, the time of year the work is performed, correcting any sub-base drainage problems, and other physical conditions at the site. The advice of a professional engineer should be sought for the causes of concrete failure or damage. The contractor should guarantee the materials and workmanship of the repair work for at least the four (weather/exposure) seasons of a full year.

Maintenance Planning & Reserves - Some associations set aside reserves based on the replacement cost of their paved areas divided by their life expectancies and use these funds for major maintenance projects as they become necessary. Other associations develop an annual and a multi-year pavement maintenance program. An annual program typically includes minor maintenance projects, which are often financed out of the yearly operating budget. A multi-year program typically includes a list of major maintenance projects, their anticipated costs and a schedule for when they are expected to be performed. A program approach to pavement maintenance enables an association to accumulate sufficient reserve funds to cover the cost of maintenance work by the time it is expected. In developing a pavement maintenance schedule, an association may set aside reserves for sealing asphalt surfaces and repainting pavement lines every 5 years, resurfacing asphalt streets every 10 years, major concrete work in 20-25 years, etc.

When planning for pavement maintenance, the inventory of paved areas (see "Project Inventory," Chapter 4) should note the age of each segment of sidewalk, paved surface, and street. In some developments, paved surfaces have been constructed at different times with different specifications and construction methods, and may require separate maintenance schedules due to the age difference or other problems that affect one section of pavement but not another. Whether or not an association performs pavement maintenance depends upon the amount and type of work to be done, the funds available for professional maintenance, and the availability of volunteer or employee manpower. The quality of both the surface and drainage construction will affect the frequency, severity and cost of pavement repair. A community experiencing severe problems with its pavement may want to contact a professional engineer to develop a long range pavement program. Pavement maintenance and repair costs are subject to many variables including: price fluctuations of the worldwide petroleum market, mobilization costs for equipment, labor, job size, seasonal weather, site preparation, and clean up/restoration of the area affected. Contractors are busiest during warm-weather months and may charge more or may not even consider small projects during this time of the year. Cold weather (below 50^0F) may cause problems, because asphalt must be hot to

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achieve proper "knitting" of the materials for a durable, long-lasting surface. A contractor should identify all conditions that affect the cost of the proposed work.

The following technical publications of the Asphalt Institute detail the design, construction, maintenance and repair of different applications and may help to clarify an engineer's or contractor's proposal for asphalt repairs.

- Asphalt Surface Treatments-Specifications – Contains explicit information on specifications for single and multiple surface treatments with asphalt. The book discusses general requirements, materials, construction, preparation of surfaces, equipment, sampling, testing methods, application of asphalt primer, mineral aggregate, asphalt binder, traffic control, safety, measurement and payment basis, and notes to the engineer. 8 pages - $6.00

- Asphalt Surface Treatments-Construction Techniques – This booklet details the construction procedures for asphalt surface treatments including: inspection of existing pavements, asphalt distributor, checking distributor speed, checking spreads, aggregate spreaders, rollers, power brooms, auxiliary equipment, pavement preparation, surface treatment design, spraying the asphalt, aggregate spreading, rolling, traffic control, multiple surface treatment, precautions, glossary, primes and road-oiling, distributor data. Fully illustrated; 28 pages - $10.00

- Asphalt Pavement for Athletics and Recreation – Describes and illustrate how Full-Depth asphalt construction provides smooth, all-weather pavements for a variety of athletic and recreational uses. Numerous photos; 16 pages - $6.00

A full catalog of publications is available from The Asphalt Institute, Lexington, KY by calling (859) 288-4960 or online at http://www.asphaltinstitute.org. Additional information about asphalt and concrete pavements is available from:

- The National Asphalt Pavement Association in Lanham, Md. at (301) 731-4748 or at http://www.hotmix.org/index2.html.

- The Virginia Department of Transportation in Fairfax, Virginia at (703)-383-8368 or at http://virginiadot.org/quick/nova_quick.asp;
- Virginia Asphalt Association, Inc. in Richmond, VA 23226 at (804) 288-3169

- The American Portland Cement Alliance in Washington, DC at (202) 408-9494);

- The Fairfax County Public Facilities Manual, in County Libraries, Fairfax, VA, or Maps & Publications Office, Fairfax County Govt. Center, Suite 127 at (703) 324-2974 or at http://www.fairfaxcounty.gov/dcccp/maps.htm.

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Swimming Pools:

Swimming pools operated by community associations are considered public pools by the County and must comply with the County's Swimming Pool Ordinance, Fairfax County Code, Chapter 69 (at: http://www.fairfaxcounty.gov/default.htm). This Code section is enforced by the County Health Department, Environmental Health Division (703) 246-2444 or at http://www.fairfaxcounty.gov/service/hd/ehdweb.htm. The ordinance contains comprehensive requirements regarding the operation and management of existing swimming pools, and design and construction requirements for pools constructed after May, 1978. The Health Department can order changes to pools that do not comply with these design and construction requirements when the Department feels the life, health, or safety of the users is jeopardized. The Health Department can also require repairs to any equipment or correction of any conditions it rates deficient during regular inspections of the pool during the swimming season. Each spring the Health Department sends a packet of information to pool owners, including community associations with a pool(s). This information outlines the steps required to obtain an operating license, and contains swimming pool operation guidelines to assist associations in complying with the ordinance. The ordinance requires:

- obtaining an annual license from the Fairfax County Health Department for the year-round indoor pool or a seasonal license for the outdoor pool which is required prior to the pool opening. The license will be issued only after an application form and payment of an annual fee of one hundred and fifty dollars ($150.00) are received, and satisfactory electrical and Health Department inspections are completed. Residential pools which existed prior to May 30, 1978 and which are now owned by an owners' association having fewer than twelve (12) families are exempt from requirements of the pool code. For association owned pools in the cities of Falls Church and Fairfax, there is no license fee, however, the annual or seasonal license must be obtained by application and satisfactory inspections.

- each pool must have a staff person on the premises who holds a valid pool operator's permit issued by the Health Department;

- safety and rescue equipment must be available, including a telephone with numbers for police, rescue services, and the fire department;
- at least one lifeguard must be on duty at all times, with additional lifeguards present when more than 75 persons are in the pool area;

- at least one person certified in cardiopulmonary resuscitation (CPR) must be on duty at all times. Certification in CPR shall be in accordance with the "Standards and Guidelines for CPR and Emergency Cardiac Care as Prescribed by the Journal of the American Medical Association" or equivalent program approved by the Director of Health Services.

- standards regarding clarity of the water, pH and alkalinity ranges;

- specific water treatment chemicals unless excepted by the Health Department;

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- records of pool water test results must be kept for Health Department review, and must be posted in a location where readily observable by pool/spa users.

Pool Operating Expenses - Pool operating expenses depend upon the size of the pool, the hours of operation, length of season, and the scope of contracted management services. Most pools in the county are open for a 95-100 day season (from Memorial Day to Labor Day), while other pools open earlier and/or close later, often on a reduced schedule. Personnel costs are a significant portion of pool operating expenses. When budgeting pool expenses, an association must first decide the total hours of operation per season, and number of staff persons needed for the expected number of users during normal and peak use periods, multiplied by 120% of the average wage to account for normal employee expenses and overhead. Pool operating expenses also include preparation of the pool, deck and related facilities in the pool area for the swimming season (summarization), closing the pool and preparation for cold weather (winterization), and maintenance of the pool and bathhouse facilities during the swim season. Many associations contract with professional pool maintenance firms to perform some or all of the summarization and winterization tasks, including being present for the Health Department inspection. Pool operating expenses may also include:

- insurance;
- chemicals for treating pool water;
- utilities: electricity for motors and lights; water for the pool and bathhouse; gas/oil for heating pool and bathhouse water; telephone;
- supplies: cleaning and paper products, cleaning equipment, light bulbs, other supplies; and
- poolside furniture and equipment: funds for purchase and repair of chairs, tables, umbrellas, and other equipment;

Summerization - This essential annual service generally includes:

- removal of leaves, litter, and accumulated debris, and thorough vacuuming and cleaning of the pool. Draining and acid washing of the walls and bottom may be necessary. Only professionals should drain pools, taking care to properly discharge the water, particularly if it contains acid or other cleaning agents.
- flushing and recharging the fresh water system, and activating the chemical treatment equipment;
- servicing the pump motor and activating the filtering system;
- remounting and checking the safety of diving boards and other equipment;

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- reinstalling skimmer baskets and cover plates;
- testing the water supply and filling the pool to the proper level;
- repairing and cleaning the bathhouse and pool area;
- arranging for electrical and Health Department inspections;
- arranging for Fire and Rescue Department inspection and certificate; and
- installing telephones, equipment, and ordering supplies.

Winterization - This essential annual service generally includes:

- lowering the water level to 12”-18” below normal water level, and treating the water with an algicide and stain prevention chemicals;
- backwashing, draining, and cleaning each filter, removing debris from strainers and skimmers, draining pipes, and shutting off the water supply;
- flushing, draining, and disconnecting chlorinators and hypochlorinators; and
- removing and storing diving boards, ladders, chairs, ropes, and equipment.

Pool Service Companies - Many associations use pool servicing companies to perform pool maintenance and repairs and provide pool personnel and management services. The association must decide the scope of services, what the association is responsible for, who will purchase/provide water treatment chemicals, household supplies, cleaning equipment (hoses, buckets), first-aid kits, etc.; who will arrange for and be present during electrical and health inspections; and who will clean and repair the bathhouse(s). The association must clarify whose personnel will provide swimming lessons, handle guest fees, catering and clean-up at special association parties or private functions. Contracting for pool management and maintenance services should follow the guidelines in Chapter 3 and factors that are particularly relevant to pool service contracts, such as:

- Pool contracts should be negotiated as early as possible (fall is best) to give both the contractor and the association adequate time to plan and to perform necessary maintenance during the off season. Does the contractor operate on a seasonal basis or year round and can he/they provide all the services the association needs? Make certain the contract requires the services to be provided, including enforcement of pool rules and the daily operating procedures to be followed.
- Make certain the contractor is properly licensed and insured for liability and property damage; assure that contracted services include compliance with all

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environmental and hazardous material regulations affecting and concerning pool chemicals.

- ensure that the contractor provides worker's compensation, pays social security, minimum wage, etc.; if the personnel assigned to your pool will meet County lifeguard and/or pool operator license requirements; if provisions are made for supervision of the pool staff, and who supervises them and how often.

- Make certain the contract contains provisions for emergency closing of the pool and a reimbursement clause in case of a long shutdown beyond control of the association.

Some associations manage their pool themselves to reduce operating costs, maintain control over pool staff, purchase chemicals and supplies, and contract only for essential maintenance that the association cannot provide. Before committing to self-management of its pool, the board of directors should look realistically at its liability risk and the cost of liability insurance versus the cost of contracting with a pool management company. Such companies can provide trained and insured lifeguards and pool staff, which may significantly reduce the association's general liability costs to more than compensate for the cost of the pool management contract. The Pool and Spa Operator's Handbook, a textbook for the Certified Pool Operator (CPO) course, is available for $25 from the National Swimming Pool Foundation in San Antonio, TX. At (210) 525-1227 or at http://www.nspf.com. Associations may find it valuable to train at least one member in a Certified Pool Operator (CPO) course. Such courses are sponsored jointly by the area health departments, the American Red Cross, and private swimming pool businesses. The Northern Virginia Community College (NOVA) offers this course at its Alexandria (703) 845-6200, Annandale (703) 323-3000, and Loudoun (703) 450-2500 campuses, and can be reached for additional information at http://www.nv.cc.va.us.

Pool Maintenance and Repairs - Proper maintenance of a pool and its equipment is essential to preserve life expectancy and to prevent premature repairs. However, deterioration is a normal process and repairs are inevitable; severe winter weather can cause structural damage, mechanical parts will need repair, and pool linings will need replacement after seasonal use and repeated acid cleanings. Pools vary as to the frequency and extent of repairs due to the quality of the construction; the adequacy of maintenance; the day-to-day operation and care of the pool; and the extent of deterioration caused by freezing and thawing. A pool 1-2 years old should be free from significant repairs; a 3-5 year old pool may need caulking and repairs to the tiles and edge coping; a 6-8 year old pool may require repair and replacement of some mechanical parts and deck materials; an 8-10 year old pool can expect to need a new interior surface. When major pool repairs are needed, an association should be careful to use detailed specifications for the work, as they can have a significant impact on the success and longevity of the repairs as well as the cost. If after 8-10 years the interior finish in the pool needs to be resurfaced, the cost will depend largely on the amount and type of surface preparation to be done – will the surface be removed from under the tiles and around lights and inlets, and what thickness will the new coating be?

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One method of obtaining specifications for repairs is to hire a reputable pool builder or designer to evaluate your pool conditions, recommend necessary corrective work, and write specifications for this work, thus enabling the association to advertise for competitive bids based on the same specification. To find the names of reputable pool builders and service firms, contact the National Spa & Pool Institute at (703) 838-0083, ext. 156 or at http://www.nspi.org and request the NSPI Dealer Directory of members, who are properly licensed and subscribe to a code of professional ethics.

Swimming Pool Reserves - When formulating reserves for swimming pools, associations use different approaches. Some associations determine the amount for each year's reserves by using the replacement cost of the pool divided by its remaining useful life. These funds are then used to cover both anticipated and unexpected major repairs. Other associations determine the cost and life expectancy of the pool's major components and develop a replacement schedule for each component for a 20-25 year period. Funds can be set aside to cover re-plastering every 10-12 years, new mechanical equipment every 8-10 years, and major surface and deck repair every 6-8 years. The services of a professional may be required to accurately project the replacement time and costs of these components, as their life expectancy is often affected by the type and quality of the original equipment installed as well as the maintenance they have received. Severe weather can cause damage, thus the reserve fund should anticipate unexpected costs. Repair and replacement of bathhouse facilities, fencing, pool equipment and landscaping, lighting, etc., should be included in operating expenses and reserve funds.

Tennis Courts:

Outdoor tennis courts in the Washington, D.C., area are mostly constructed with either a hard all-weather surface or a soft, fast-dry granular surface. Regular maintenance and resurfacing will protect the basic structure and surface of either kind of court and reduce the need and frequency for major renovation.

Hard, All-weather Surface, and Soft Fast-Dry Surface Courts - A hard all-weather surface court normally has an asphalt base covered with an acrylic or other surfacing material and a color coating. Regular maintenance involves hosing and sweeping the court surface to keep it clean and edging the grass around the court. Prompt removal of leaves is important to avoid staining the court surface. Hard surface courts in the Northern Virginia climate often require resurfacing with two coats of surface material, a colored finish coat, and new line paint or tape every 5-6 years. There are many different types of resurfacing and coating products. Manufacturers market a series of compatible surfaces and coatings as surface "systems" which have varying life spans and different playing properties and qualities.

The cost of resurfacing a tennis court depends upon the type of surface system chosen and the condition of the base and the existing surface. Severely cracked and

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raveled courts or courts that have "bird bath" depressions may need to be patched and/or overlaid with a 1-2" asphalt surface prior to applying a finish surface system. Maintenance requirements of specific surfaces can be obtained from the manufacturer or from a tennis court contractor. A soft fast-dry granular surface similar to a clay court is made from particles of igneous rock or fired brick with a chemical binder. This type of surface requires more maintenance than a hard surface court and must be watered daily (a sprinkler system is often installed), and frequent brushing and rolling of the surface is required.

Tennis court maintenance also includes repair and replacement of accessories, i.e., nets and cranks, posts, fences, signs, benches, lighting fixtures, etc. The cost depends upon the quality of the equipment, the amount of use the court receives, the incidence of vandalism, and severity of weather. A catalog of helpful publications and resource materials about tennis court maintenance is available from the United States Tennis Association (USTA) at (914) 696-7000 or at http://www.usta.com/index.html

Tennis Court Reserves: - Tennis court reserves are usually based upon the replacement cost of the court and a life expectancy of 25 years. The reserves may also include funds to cover the costs of periodic resurfacing, if not included in the annual maintenance budget. Either the reserve funds or the annual budget should also include the cost of replacing court accessories at their normal life expectancies.

Painting:

Associations are responsible to maintain their buildings' appearance and to protect exposed surfaces from the weather. The frequency with which painting is required depends upon the materials and the effects of sun and wind. Some parts or surfaces of a building such as doors, trim or siding facing the sun require more frequent care than others. It is less costly to refinish a surface before the existing finish has begun to chip, flake, or peel. Cracked, peeling or damaged finishes expose the underlying materials to deterioration and damage, and refinishing costs increase the more it is necessary to sand, wire brush, seal or otherwise prepare the surface for new paint. A contractor or a paint manufacturer's representative can assist with determining an association's painting needs, recommended schedule, and cost estimate. The contracting procedures outlined in Chapter 3 and the following should be carefully considered and followed:

- When evaluating a painting contractor, make sure he/the firm has the experience and any special equipment required for your structure;
- Insist upon a written warranty against defects in material and workmanship; one to two years warranty period is not unreasonable;
- Use high quality paint to last longer and not significantly increase the cost of the project, as labor is the most costly portion of painting expense;

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- Ensure that the contract includes proper preparation of the surface to increase the life expectancy of the paint and to decrease the likelihood of a warranty claim.

Painting reserves should be based on a realistic estimate of the cost and should be updated regularly. Painting reserves are considered taxable income because painting is a non-deductible maintenance expense, not a capital expenditure. Associations should consult an attorney or tax accountant about this issue. An alternative is to paint and pay on an annual basis. If complete painting is necessary every five years, the annual operating budget for each year should include funds for painting one-fifth of the total surface area. This annual expense then may be deductible as an operating expense for maintenance, and no reserve fund (taxable or otherwise) is needed.

Accessibility for Disabled Persons – Americans with Disabilities Act (ADA), and the Fair Housing Act (FHA), as amended:

The Americans with Disabilities Act (ADA) of 1990 requires all places of public accommodation to provide safe, barrier-free access for persons with disabilities. Association pools and facilities may be considered as "public accommodations" under the ADA. Swimming pools, playgrounds, tennis courts, trails, paths and walkways must be made accessible wherever it is practical to do so. Facilities must comply with the ADA when used by individuals and groups other than members of the association that owns the facilities. Therefore, associations may be required, (or may freely choose), to make modifications to provide for disabled persons.

The Federal Fair Housing Act (FHA), as amended, provides accommodation for the handicapped or disabled persons in multi-family dwellings such as apartments and may be applicable to property owners' and condominium unit owners' associations. In almost every case, these requirements govern new construction and include areas, structures and facilities that are used only by members of the association, whether or not the facility is a public accommodation. A limited common element entranceway in a condominium development may have to be modified if a unit owner (or family member) is a disabled person. The property or unit owner pays for modifications required under FHA, whereas under ADA, they are paid for wholly by the association.

The Virginia Uniform Statewide Building Code (VUSBC) imposes the requirements of ADA and FHA on certain improvements, areas and facilities, particularly those available to or used by individuals outside of the association that owns the facility. These provisions apply whether or not any use charge or rent is collected. ADA applies to structures and buildings, such as offices, swimming pools, and community centers; and to areas of access to these facilities, e.g., parking areas, entrance ramps and doors, restrooms, walkways, and decks and patios around swimming pool areas. The VUSBC governs all new construction and alterations, and incorporates the ADA and the FHA implementation guidelines. In addition to complying with the requirements of the VUSBC, existing areas must be upgraded for accessibility as additions and interior alterations are constructed. The ADA specifies acceptable upgrade areas and items and may require an additional expenditure of up to 20% of the cost of the new alteration or addition for these upgrades. In general, any new structure, addition and alteration (including required upgrades to existing structures) must comply 100% with the ADA,

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FHA and VUSBC guidelines and standards. For information on the VUSBC and new structures, additions and alterations contact the Fairfax County Office of Building Code Services, Building Plan Review Division at: http://www.fairfaxcounty.gov/dpwes/epr/index.htm or at (703) 324-1645. Questions concerning ADA application to non-structural site developments and issues may be directed to the DPWES Environment and Facilities Review Division at (703) 324-1720.

The Federal Department of Justice has issued guidelines for accessibility to many public accommodation facilities, and is expected to issue similar guidelines for public swimming pools. These guidelines may require modifications to existing pools and facilities as part of any significant renovation or repair as well as for new construction. Under these guidelines, building owners, including homeowner associations, must remove existing barriers to access, entry and use of facilities by individuals with disabilities. Removal is required to the extent that it is practical and feasible, and applies to all areas of public access/assembly, as determined by the Department of Justice. Qualified contractors must comply with ADA requirements and should know which ones apply to association pools and other facilities, and what products and designs meet ADA criteria. The cost of these one-time requirements depends upon the number of affected facilities and the complexity of construction. For most associations these unexpected costs are neither included in the annual operating budget nor the long-range capital reserves, and therefore, represent a significant financial burden that may necessitate passage of a special assessment (refer to the section on Special Assessments in Chapter 4 of this manual). Contact the Department of Justice at 1-800-514-0301 or at http://www.usdoj.gov/crt/ada/adahom1.htm.

Associations should be aware that the U.S. Department of Justice enforces and vigorously prosecutes violations of Title II of the ADA involving the provision of public services and barrier removal requirements. Failure to comply with requirements of the ADA and the FHA carries severe Federal penalties and could also expose an association to a liability suit and punitive damages if a disabled person is injured; or a civil rights suit even if no injury occurs. Prior to undertaking any compliance, rehabilitation, alteration, and/or capital improvement projects, associations are encouraged to seek information and clarification on ADA and FHA requirements in conjunction with their facilities and proposed project(s), and to seek advise and council from their attorney.

Chapter 6 - ADMINISTRATIVE EXPENSES

In addition to the management, operating and maintenance expenses described in the preceding chapter, there are significant costs allocated to the administration of an association that must be included in the annual budget and must, therefore, also be part of each owner's property assessment. Administrative expenses are generally categorized as taxes, insurance, legal services, and audit services, although individual associations may incur other types of administrative expenses. This chapter describes the administrative costs that are generally common to all community associations.

Taxes:

Federal Income Tax - Whether incorporated or not, property owners' and condominium unit owners' associations may be considered corporations for tax purposes by the Internal Revenue Service (IRS), and most associations are required to file a federal income tax return at the end of their fiscal year. Since the tax laws are subject to change each year, and because the consequences of improper or incomplete exemption filing can be costly and punitive, it is strongly recommended that associations check this information and confirm their exempt status with the IRS and/or a tax advisor or accountant. The following information is for awareness purposes only and should not be relied upon for tax filing. Associations must usually file under the most recent revision of one of the following sections of the Internal Revenue Code of 1986 (IRC), as amended:

- a tax-exempt organization under Section 528, which specifically applies to property owners' and condominium unit owners' associations; or,
- a tax-exempt civic league or social welfare organization (Section 501I(4)), or a social or recreation club, Section 501I(7); or,
- file as a taxable corporation.

Tax-Exempt Status Under IRC Section 528 - community associations generally apply for tax-exempt status under Section 528 of the Internal Revenue Code, which was enacted as part of the 1976 Tax Reform Act to clarify the tax status of property owners' and condominium unit owners' associations. It provides tax-exempt status for that portion of an association's income that relates directly to maintenance and operation of the common properties, called "exempt function income." Other income of the association is taxed. Regulations to implement this section of the tax code became effective on April 18, 1980, and are retroactive to tax years after 1973. Under the regulations, an association qualifies for tax-exempt status on its exempt function income if all of the following criteria are met:

- It is organized and operated to provide for the acquisition, construction, management, maintenance and care of association property; and,

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- substantially all (85%) of the units or property (square footage) is used by individuals for residential and auxiliary residential purposes; and,

- 60% or more of its gross income is derived from the membership dues, fees or assessments of owners in the association; and,

- 90% or more of its expenditures for the tax year is used for the acquisition, construction, management, maintenance and care of association property; and,

- no part of its net earnings benefits any shareholder, owner or individual.

Associations may apply for tax-exempt status under Section 528 by annually filing IRS Form 1120-H, "U.S. Income Tax Return for Homeowners Associations" on or before the 15th day of the third month after the end of the association's tax year. Under Section 528, association income received for fiscal years beginning after December 31, 1980, which is not tax-exempt is taxed at a rate of 30%, and includes interest or other income earned on reserve funds, fees from non-members for use of association facilities, and special fees such as party room fees, etc. IRS regulations permit a separate fee for the use of a facility (such as a swimming pool) to be considered as tax-exempt income if it is assessed annually and entitles the member to use the facility for the entire year/season. (See sample form 1120-H at the end of this chapter).

Tax-Exempt Status under IRC Section 501I - The most advantageous status for a community association is that of a tax-exempt organization under Section 501I of the Internal Revenue Code. An association that wishes to apply for tax-exempt status under 501I should obtain IRS Publication 557, "Tax-Exempt Status for Your Organization", and IRS package 1024 "Application for Recognition of Exemption under Section 501I". Copies can be obtained by calling the IRS "Forms Only" at 1-800-829-1040 or online at http://www.irs.gov/forms_pubs/index.html. For a property owners' or condominium unit owners' association to qualify for an exemption as a civic league or social welfare organization under Section 501I(4), the association must meet each/all of these terms and conditions as a "community association":

- The association must be a membership organization formed to own and maintain common green areas, streets, sidewalks, etc., and to enforce covenants to preserve the appearance of the development; and,

- the association must show that it is operated for the benefit of all the residents in the community; and,

- show that use and enjoyment of the common areas such as roads and park land or facilities it owns and maintains is extended to the general public and is not restricted solely to its members; and,

- show that it does not engage in activities directed to exterior maintenance of private residences.

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The term "community" refers to a geographical unit that is a governmental subdivision, unit or district. Although an area represented by an association may not be a community (within the meaning of that term), it can still qualify for the tax exemption if the association's activities benefit a community. Some associations may qualify as a tax-exempt social or recreational club under Section 501I(7) if their responsibilities are limited solely to maintaining recreational facilities. A requirement for common areas to be open to the public precludes many (homeowner) community associations and all condominium associations (common elements are privately owned) from qualifying as tax-exempt organizations under Section 501I(4). It should also be noted that civic associations might qualify for tax-exempt status under Section 501I(4) under somewhat different criteria as a social welfare organization. Because of the complexity and legal terminology required to apply for a tax exemption, an association may wish to hire a tax attorney to assist in filing for tax-exempt status. Once tax-exempt status is obtained, the association must make sure its activities remain within those permitted under the exemption. Even those associations that are exempt from federal income tax under Section 501I must file an annual information return on IRS Form 990 (or 990EZ) if its annual gross receipts are $25,000 or more. If the annual gross receipts are less than $25,000, Form 990 is not required, however, the association may still wish to use it to satisfy state tax reporting requirements. Also, if the association receives a Form 990 package with a preaddressed label, it is being asked to file the return to update IRS records. By following this instruction, the association will not have to be contacted in future years (see General Instructions A and B for IRS Form 990 and 990EZ, online at http://www.irs.gov/pub/irs-pdf/i990-ez.pdf).

Taxable Corporations - If an association does not qualify for tax-exempt status under Section 501I or Section 528, it must file a corporation tax return on Form 1120-H and be taxed for income generated over and above its expenditures (see IRS Publication 542, "Tax Information on Corporations.") An association's taxable income is often the same under both Section 528 and corporate tax statutes. It may be advantageous to be taxed as a corporation and deduct net operating losses and other corporate deductions that are not available under Section 528. In 2001, corporate taxable income not over $50,000 was taxed at the rate of 15% versus 30% under Section 528. However, if taxed as a corporation, an association must be careful that the method used to set up reserve funds and levy special assessments for capital improvements meets IRS requirements to shelter the funds from taxation. A tax attorney or CPA should be consulted.

State Income Tax - Although Virginia's property owners' and condominium unit owners' associations are generally required to file state income tax return Form 500, provisions in the state tax code typically result in little or no tax liability for the association. A Virginia nonprofit corporation, exempt from federal income tax under Section 501I of the Internal Revenue Code, is taxed by the state only on its unrelated business taxable income; otherwise no tax return has been required. Virginia income tax forms and

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schedules for corporations are available from the Department of Taxation, Forms Request Unit, by calling (804) 367-8055 or (804) 367-8205, or at http://www.tax.state.va.us.

Fairfax County Real Estate Tax - Section §58.1-3284.1 of the Code of Virginia Ann., provides that all real property used for open or common space and owned by an automatic membership corporation or association "shall be construed as having no value in itself" for (tax) assessment purposes. The real value of such open or common space is proportionately assessed to each residential (or commercial) lot or property that is part of a planned development which contains the open or common space and which includes the right of each property owner to use the common space(s). Every local government is required by this law to reassess the open or common space(s) and each individual property of the development as of the date the open or common space is transferred from the developer to the association. Thus, the individual property tax assessments reflect the value of the common area(s) and no tax on these areas of real property is due from the association. Contact the Fairfax County Department of Tax Administration at http://www.fairfaxcounty.gov/dta/homepage.htm, or call (703) 222-8234 if your association receives a tax bill for its common ground real property.

Fairfax County Personal Property Tax - An association is responsible for paying personal property tax on the same basis as a business or individual unless exempted from taxation by an act of the General Assembly. Each year associations must declare taxable personal property between January 1st and May 1st on forms from the Fairfax County Department of Tax Administration. Tax bills are mailed in the summer to be paid by October 5th. For budget and assessment purposes, automobiles and trucks belonging to an association and weighing two tons or less are to be appraised at the average trade-in value listed in the January edition of the National Automobile Dealers Association (NADA) Official Used Car Guide. Fairfax County uses a computerized version of the NADA guide and does not adjust for vehicle options or mileage. Values for new vehicles not listed in the guide are assessed at a percentage of the Manufacturer's Suggested Retail Price for the base model. Older vehicles not covered in the guide are assessed at a declining percentage of the last model year listed.

Other personal property of a condominium or homeowner association, (i.e., lawn and landscaping tractors and equipment, playground equipment, and business equipment/ furniture such as desks, chairs and typewriters, file cabinets, etc.) are currently taxed at a rate of 1 cent per $100 (of current value). Fairfax County adopted this lower tax rate "On the furniture, office, and maintenance equipment, (exclusive of Motor Vehicles), which are owned and used by an organization whose real property is assessed in accordance with §58.1-3284.1 and which is used by that organization for the purpose of maintaining or using the open or common space within a residential development as classified by the Code of Virginia Ann."

In 2002, the General Assembly amended the Virginia Real Estate Cooperative Act (§ 55-428 of the Code of Virginia) to provide that residential cooperative associations shall not be deemed to be a business for certain state taxation purposes. It also classifies

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tangible personal property of residential cooperative associations as household goods and personal effects making such property eligible for exemption from local personal property taxes. The amendment affects neither homeowner nor condominium associations that are still considered businesses for certain state and local taxation purposes. Legislation for similar tax exemption for condominium or property owners associations will likely follow, however, any tangible personal property remains taxable until the respective Acts are amended.

Business, Professional and Occupational License – (BPOL) Tax - Associations are generally exempt from the local BPOL gross receipts tax as long as the proceeds from any functions or events are used for the upkeep and beautification of association common grounds and facilities. However, in other jurisdictions where "local governments have become creative in searching for new revenue sources",[27] some condominium unit owner associations have still been locally taxed on their assessment income. In response, the 2002 General Assembly amended (only) the Condominium Act to preempt such local taxation. Similar preemptive legislation for property owners associations may be introduced in the General Assembly in the near future. Information about the BPOL tax may be obtained from the Fairfax County Department of Tax Administration at (703) 222 8234) or online at http://www.fairfaxcounty.gov/dta/homepage.htm.

Fairfax County Public Utilities Tax - The County levies a tax on gas, electric and telephone service. The tax on residential gas service is based on consumption, and is $0.05259 per CCF, with a maximum tax of $4.00 per bill. The tax on commercial customers is $0.04794 per CCF, with a maximum tax of $300 per bill. For electric service, residential customers pay $0.00605 per kWh or a maximum tax of $4.00 per bill. The tax on commercial customers is $0.00594 per kWh with a maximum tax of $1,000 per bill. Telephone service is taxed at 22.2% of the local service only, and is limited to the first $50 per month for residential use and the first $1,600 per month for commercial use. These monthly phone taxes are billed and collected for the County by the various telephone companies.

In 1990, the County established guidelines that govern the utility tax treatment of common areas and improvements (facilities) in residential developments. For tax purposes only, these guidelines classify electric or gas service to common areas of residential developments (such as condominiums, townhouses or single-family detached homes) as residential use. Associations whose electric or gas service for common areas (a clubhouse or pool) is taxed at commercial rates may apply for a change in tax status. To qualify for residential tax status, at least 80% of the units in a building or development must be used for dwelling or recreational purposes. Contact the Tax Administration at (703) 324-INFO and access message #886, or online at http://www.fairfaxcounty.gov/dta/homepage.htm for a tax status change. This status is for utility tax (only) and has no bearing on a utility's own classification for billing purposes.

[27] Lucia Anna Trigiani, "A Different Session," Quorum Magazine, copyright by Washington Metropolitan Chapter Community Associations Institute, June 2002; page 22.

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Federal and State Employment and Unemployment Taxes - An association that has employees may be responsible for federal and state income withholding taxes and social security taxes. Additionally, an association may be obligated to pay federal and state unemployment liability taxes. Information about the rules for paying and reporting federal income tax, social security taxes, and federal unemployment tax is contained in IRS Publication 15, Circular E, Employer's Tax Guide. The guide can be obtained by calling the IRS at (800) 829-1040 or at http://www.irs.gov/forms_pubs/index.html. Contact the following offices for information about:

Virginia Unemployment Taxes:	Virginia Employment Commission, Fairfax, VA. (703) 803-1100, or 1-800-828-1140 (Richmond, VA). http://www.vec.state.va.us/index.cfm?info=about_vec
Virginia employer income tax withholding:	Virginia Department of Taxation, Fairfax, VA. (703) 359-6715, or 1-888 268-2829 (toll free), or at http://www.tax.state.va.us

Common Interest Community Management Information Fund

A "common interest community" means developed real estate subject to a recorded declaration and containing some residential lots, common grounds, and/or facilities. The declaration and state law also require mandatory membership of all property owners and an obligation to pay assessments for maintenance and operation of the common grounds. In 1993, the Code of Virginia was amended to establish the Common Interest Community Management Information Fund, and assigns authority for management of the Fund to the Virginia Real Estate Board (VREB). In 2001, the Code of Virginia was further amended to establish a Community Association Liaison position to administer the Fund. This liaison is an information resource relating to the governance, administration and operation of common interest communities, and may provide non-binding interpretations of the laws or regulations that govern common interest communities. This liaison also provides information regarding public and private mediation centers that offer alternative dispute resolution services as a low-cost resolution of conflicts between associations and their members in lieu of legal proceedings. For more information, call the VREB Community Association Liaison at (804) 367-2941.

Under the laws, all condominium, cooperative, and property owners' associations are required to file an annual report and $25 filing fee with the. The fee is to be used at the discretion of the VREB for research and education to promote the operation of common interest communities. The required annual report must be filed with the Virginia Real Estate Board, in the Department of Professional and Occupational Regulation. The following VREB forms and information are also available online at http://www.state.va.us/dpor/indexie.html:

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TO ALL INTERESTED PARTIES:

Re: Common Interest Community Management Information Fund
Annual Report Requirements

Dear Sir/Madam:

The Common Interest Community Management Information Fund (Fund), managed by the Real Estate Board, was established by legislation to research and educate board members and those living in or considering living in common interest communities on improving the operation and management of associations through a Community Association Liaison. The Liaison also recommends expeditious and inexpensive ways (i.e. mediation) to resolve disputes in common interest communities.

Residential condominium, cooperative and property owner associations, as of July 1, 1993, are required to file an annual report and a fee with the Virginia Real Estate Board. The fee is deposited into the Fund.

It is recommended this memo, the "sample" annual report, and the revised annual report be printed and retained in your association's reference file. The revised annual report form requests the following:

- An existing association's certificate number.
- The association's name and address.
- When and in what city/county the association's declaration was filed.
- When the owners took over control from the declarant.
- The contact person for the association.
- The type of management (self or professional) for the association.
- The officers'/board members' names, addresses, and titles.
  Associations may attach a list of officers/board members. Associations that are incorporated may send a copy of the annual report filed with the State Corporation Commission in lieu of listing names.
- COMPLETE ALL QUESTIONS **with available information.** (Whether the association is renewing or new.)

Effective June 2002, a certificate's expiration date will be the last day of the month the certificate is due to expire. The certificate's expiration date will not change if payment is received and posted after the certificate's expiration date. (ie. The certificate currently expires on August 8, 2002 and payment is received and posted September 20, 2002. The certificate will now expire on August 31, 2003.)

Mail the annual report, list of board members, and a $25.00 a check payable to Treasurer of Virginia to:

Department of Professional & Occupational Regulation
P.O. Box 11066., Richmond, VA 23230-1066

Upon receipt, a renewed certificate will be sent to the contact's address.

If you have any questions or require further assistance, please do not hesitate to contact me at (804) 367-2941.

Sincerely,

Cynthia G. Schrier

Cynthia G. Schrier
COMMUNITY ASSOCIATION LIAISON

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Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8510

Real Estate Board
ASSOCIATION ANNUAL REPORT
Fee $25.00

A check or money order payable to the *TREASURER OF VIRGINIA* must be mailed with this form.
PLEASE TYPE OR PRINT.

1. Has this association previously filed with the Virginia Real Estate Board?
   ☐ No ☐ Yes If yes, please enter your certificate number. 0 2 5 0 _____
2. Full Name of Association _____
   Mailing Address _____
   City, State, Zip Code _____

3a. Type of Association
   Property Owners ☐ Residential Condominium ☐ Cooperative ☐

b. Date Owners Association Created MMM-YY _____

c. Number of Units/Lots _____

4. Declaration Recorded MMM-YY _____ CITY/COUNTY _____

5. Name of Contact Person _____
   Mailing Address _____
   City, State, Zip Code _____
   Telephone & Facsimile Numbers ( ) – _____ ( ) – _____
   Telephone Facsimile

6. Is the association self-managed? ☐ OR under contract with a company? ☐ If under contract, please answer 6a.

6a. Name of Management Company _____

MEMBERS OF CURRENT BOARD OF DIRECTORS/OFFICERS

7. Name _____ Name _____
   Title _____ Title _____
   Address _____ Address _____

   Name _____ Name _____
   Title _____ Title _____
   Address _____ Address _____

   Name _____ Name _____
   Title _____ Title _____
   Address _____ Address _____

(If more space is needed, attach additional sheets of paper.)

Effective June 2002, a certificate's expiration date will be the last day of the month the certificate is due to expire. The certificate's expiration date will not change if payment is received and posted after the certificate's expiration date.

8. _____ _____ _____
   Signature Title Date

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE
				0 2 5 0	

ASSOCIATION DISCLOSURE PACKET NOTICE

Note to prospective purchasers: The lot you are considering purchasing is in a development which is subject to the provisions of the Virginia Property Owners' Association Act. Living in a community association carries with it certain rights, responsibilities and benefits.

Some of the benefits include the right to use common areas, which may include swimming pools, parks, playgrounds and other recreational facilities. In order to finance the operation of the community, each owner is responsible for and obligated to pay regular assessments, and if necessary, special assessments to ensure that the financial requirements are met. Failure to pay any of these assessments may result in a lien being placed on your property.

The use of common areas, financial obligations of lot owners' and other information concerning the rights, responsibilities and benefits resulting from the purchase of a lot in this common interest community are subject to the provisions of governing documents that typically include a declaration, bylaws, articles of incorporation and rules and regulations. These documents play an important role in association living and should be reviewed carefully prior to your purchase.

Some decisions of your association will be made by the board of directors, while others will be made by a vote of all association members, made up of the other lot owners in your development. You will be bound by all decisions of the association and the board of directors. The documents cited above contain information concerning the selection of members of the board of directors, meetings, voting requirements, and other important information you should become familiar with. REMEMBER: Failure to comply with the governing documents of your association can result in legal action being taken against you.

You may wish to become active in your association, either by running for the board of directors or by serving on a committee. Your involvement is important, as you will be bound by all decisions of the association and the board of directors.

The name of your association is:

_____

Lot number and address:

_____

Assessments and/or Mandatory Fees you are responsible for:

Assessments: _____ **per** _____

Special assessments: _____

Other entity or facility: _____

Other fees: _____

Failure to pay any of the above Assessments and/or mandatory Fees may result in nonjudicial foreclosure on your property or the following:

_____

_____

ALL DOCUMENTS AND INFORMATION CONTAINED IN THIS DISCLOSURE PACKET PLAY AN IMPORTANT ROLE IN LIVING WITHIN A COMMON INTEREST COMMUNITY AND SHOULD BE REVIEWED CAREFULLY PRIOR TO YOUR PURCHASE OF THE PROPERTY. A LIST OF THOSE DOCUMENTS YOU ARE ENTITLED TO RECEIVE IN ACCORDANCE WITH THE PROPERTY OWNERS' ASSOCIATION ACT IS PRINTED ON THE BACK OF THIS NOTICE.

Recipient Name (print): _____

Recipient signature: _____

Date: _____

This form was developed by the Virginia Real Estate Board in accordance with § 54.1-2105.1 of the *Code of Virginia* and is to accompany the association disclosure packet required by § 55-512 of the *Code of Virginia*. 11/02

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The following is a list of documents you are entitled to receive in accordance with the Property Owners' Association Act.

- the name of your association, and if incorporated, the state of incorporation and the name and address of the registered agent;
- a statement of any approved expenditures that shall require an additional assessment during the current year or the immediately succeeding fiscal year;
- a statement of all assessments and other mandatory fees currently imposed by the association;
- a statement whether there is any other entity or facility to which the lot owner may be liable for fees or charges;
- the current reserve study report (or a summary thereof), a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board for a specified project;
- a copy of the association's current budget (or a summary thereof) and a copy of its statement of income and expenses or financial condition for the last fiscal year available;
- a statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or which relates to the lot being purchased;
- a statement setting forth what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
- a statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in this disclosure notice;
- a statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;
- a statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;
- a copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
- a copy of notice given to the lot owner by the association of any current or pending rule or architectural violation;
- a copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant to § 54.1-2105.1; and
- certification; if applicable, that the association has filed with the Real Estate Board the annual report required by §55-516.1 of the Code of Virginia; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing.

Insurance

Most condominium and homeowners associations are required to purchase property and liability insurance to protect the association from financial loss caused by destruction or damage to common areas and facilities, and from claims resulting from injuries to persons or damage to their belongings while on association property. Even if not required by the documents, an association should have insurance coverage to protect the association and the interests of the individual owners in the community. Meeting an association's insurance needs requires an understanding of the types of insurance needed and available. Associations should consult several insurance companies with experienced specialists in owners' association affairs and issues, not only for competitive rates, but also for comparable and differing opinions and recommendations.

Insurance varies greatly in coverage and cost. Given the specialized needs of associations, it is advisable to use knowledgeable agents to obtain appropriate coverage. Associations should request detailed proposals, outlining the coverage required, from several insurance companies. The resulting quotations should be comparable in coverage, although recommended alternatives with lower coverage (and cost), different exclusions, and suggested risk reduction strategies should be expected. A review by the association's attorney for need, sufficiency and cost of proposed insurance coverage should be considered by the board of directors prior to committing the association to a particular policy package.

Property Damage Insurance - Property damage insurance covers the costs to repair or reconstruct buildings and improvements if they are damaged or destroyed. Property damage insurance policies are generally of two types: "Basic" or "Named Peril" policies, and "All-risk" policies. Basic or Named Peril policies specify the types of damage included in the coverage – fire, wind, flood, hail, explosion, riot, etc. and would address a particular peril brought about by an association's design, location, type of facility, or other extenuating factor identified by the board of directors. If damage is caused by a peril that is not named, the loss is not covered. Endorsements commonly available to cover property damage perils excluded from "named-peril" policies include:

- Water damage – Most policies will not cover water damage unless it is caused by damage to the exterior of the building (such as a hole in the roof). A water damage endorsement will cover water damage to the interior of a building caused by water driven under doors by wind.

- Plate glass breakage – Typically insurance policies restrict payment for glass breakage to $50 per pane and $250 per claim. If an association is responsible for substantial amounts of glass, it may want to obtain an endorsement that will pay the full amount of any glass breakage.

- Sprinkler leakage – covers damage caused by a fire sprinkler system that activates or leaks unexpectedly. Such damage, however, may be covered under a water damage endorsement (see above).

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- Vandalism – covers a loss caused by vandalism or malicious mischief, if the base policy does not cover such damage, or the base coverage is felt to be inadequate.

- Elevator insurance – covers accidents involving elevators, except those accidents caused by fire.

- Boiler and machinery insurance – provides protection against loss caused by or to boilers and mechanical or electrical machinery.

- Debris removal – covers the expense of cleaning up and removing debris after a loss. This coverage is particularly important for mid and high-rise buildings where debris removal can be very expensive.

- Conforming statute endorsements for older buildings – prevents the insurance from being invalidated if a damaged building does not conform to current local codes and provides additional coverage for costs incurred to bring the structure up to new building code requirements.

- Landscaping coverage – covers trees, plants and shrubs if they are damaged by fire, storms, vehicle accidents, exceeding the standard $1,000 coverage in many all-risk policies. It also covers damage to landscaping from wind, hail, and vandalism, which are generally excluded under normal policies.

- Flood insurance – Generally, flood insurance is not sold by private insurance companies but the federal government sells insurance to cover direct flood and flood-related damage, including mudslide and erosion, under the National Flood Insurance Program. Flood insurance information can be obtained from the National Flood Insurance Program, P. O. Box 619, Lanham, MD. 20706, (tel. (800) 638-6620).

"All-risk" policies insure against loss from all perils except those specifically excluded. Individual insurance companies exclude different perils, but generally an all-risk policy excludes earthquake, flood, sewer back-up, boiler explosions, and nuclear contamination. The exclusions listed in an all-risk policy should be carefully reviewed and special endorsements or waivers obtained to provide coverage and protect the association from an excluded peril that may very well exist. In the insurance market, this may not be as easy as it once was, although the main problem area in insurance has been in liability coverage, not property damage or casualty insurance.

Property damage insurance should cover all common property including buildings, structures, and improvements such as swimming pools, tennis courts and fences, and should also cover an association's personal property such as pool furniture, recreation and office equipment. Personal property should also be insured against burglary and theft and newly acquired property should be automatically covered under the association's policy. Insured property should generally be covered for its full replacement value. Determination of the value of real and personal property for

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insurance purposes is difficult due to inflation and increasing construction and material costs. The most accurate method is to obtain a figure from an independent professional appraiser, but this can be expensive. Most large insurance companies will provide estimates that are sufficiently accurate for insurance purposes. Some companies also offer "inflation guard" endorsements that automatically increase insurance coverage in an amount equal to inflation on a quarterly basis.

Most property insurance policies contain a co-insurance clause that reduces the insurance premium. A co-insurance clause requires that an association purchase insurance in an amount equal to at least 80% or 90% of the replacement of the property insured. If the insurance is not equal to the percent specified in the co-insurance clause, a partial loss will not be fully covered. The insurance company pays for damages in an amount equal to the percentage of the insurance coverage. For example, an association has a co-insurance clause requiring 90% coverage, and is insured for $1,000,000. A $30,000 loss is incurred, and an appraisal shows that the actual value of the property is $1,200,000. Since the insurance was not equal to 90% of the value of the property, the company will pay $27,780 for the damage, according to the formula:

$$\frac{\text{Insurance carried x amount of loss}}{\text{\% of co-insurance x property value}} = \text{amount of insurance}$$

or

$$\frac{\$1{,}000{,}000 \times \$30{,}000}{90\% \times \$1{,}200{,}000} = \$27{,}778$$

To fully protect itself, an association can obtain a "stipulated amount clause" which states that the insurance company agrees that the amount of the insurance at the inception or on the anniversary date of the policy is adequate to provide full coverage for any partial loss.

Most policies contain deductibles which can reduce the premium and the need to process small claims. Deductibles are generally $100, $500, $1,000, or more depending upon the degree of risk an association feels it can assume. An association should not assume risk that could pose a financial hardship on the association. The terms and application of the deductibles in the policy should be scrutinized to protect the association from incurring multiple deductibles which can be applied on either a per building or per occurrence basis. Some policies include a maximum deductible in multi-building losses. Property damage insurance policies should contain a "waiver of subrogation" clause to prevent the insurance company from suing association members to recover for any claims it has paid. The policy should also include a "no control" provision so that the association is protected against any increased hazard that is beyond the association's control, such as that caused by an owner.

Liability Insurance - Liability insurance protects an association against claims resulting from injury to persons or damage to their property while on the common grounds. A

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comprehensive general liability policy covers bodily injury, property damage and medical payments. Bodily injury coverage pays for assessed damages for accidental injury, illness or death, and includes payments for medical expenses, pain and suffering, and loss of income. Property damage insurance covers awards for damage to or destruction of a person's property. Medical payments coverage pays the medical costs of guests or the public who are injured on the common areas without regard to legal liability. Liability coverage is available to cover other specific situations that could increase an association's risk, including:

- garage keepers liability covers loss to owners' or guests' automobiles when parked in common area parking lots or garages;

- host liquor liability covers claims for accidents resulting from liquor served at association-sponsored functions or at private parties held on the common areas;

- hired and non-owned automobile liability covers an association in case of an accident involving a vehicle rented in the association's name or an accident involving an employee or board member who uses his/her own vehicle on association business. (The coverage is not generally primary coverage and is paid only if the employee or board member does not have sufficient personal insurance coverage);

- product liability insurance protects the association from claims resulting from defects or mislabeling of products sold at association sponsored bazaars, association operated snack bars, etc.; and

- personal injury insurance covers the association against claims for false arrest, libel, slander, invasion of privacy, etc. The insurance should cover personal injury suits brought against an association by employees or former employees.

A liability policy purchased by an association should cover the association and its members for acts, omissions or use of the common areas, and provide coverage for association activities off the common property (for example, an annual meeting held in a local church or school meeting room). The policy should contain:

- a "severability of interest clause" to protect the association when a claim is brought against a unit owner.

- a "care, custody and control" clause to cover any non-association property that is in the care, custody or control of the association;

- and a "cross liability" endorsement to cover an owner injured on the common areas.

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Directors and Officers Liability Insurance - Although widely purchased as liability protection for individual representatives (directors, officers, etc.) and the association itself, this coverage is usually misunderstood and thus often ineffective.[28] Directors and Officers Liability Insurance, or "D and O", (sometimes called "errors and omissions insurance") pays for the financial consequences of certain wrongful acts and behavior or negligence on the part of board members (or the association) that are not covered by a Comprehensive General Liability policy. Such wrongful acts/behavior could include:

- bad faith actions, breach of loyalty, and/or conflict of interest;
- failure to maintain the books and records, to collect assessments, or to maintain correct insurance;
- failure to enforce covenants, bylaws, rules and regulations;
- discrimination and/or wrongful hiring and termination practices, security and/or other personnel issues;
- mismanagement of the budget, association affairs, and/or failure to maintain adequate reserves; and
- failure to fully disclose required association information in a resale package.

Potential claimants include individual property owners (or their tenants), other board members, employees, contractors, a management company or its personnel; - virtually anyone connected to or conducting business with the association. Such claims and suits may involve monetary and non-monetary damages. Section 13.1-870 "General standards of conduct for directors" of Title 13.1 of the Virginia Code, provides that a director of a mandatory community association incorporated under Chapter 10 "Virginia Nonstock Corporation Act," shall discharge his/her duties as a director in accordance with his/her good faith judgment of the best interests of the corporation. Provisions enacted in 1987 and later provide personal liability immunity for an uncompensated officer or director (and limit the liability exposure of a compensated officer or director) for damages unless the officer or director engaged in willful misconduct or a knowing violation of the criminal law. Subsequently, the same protections of immunity and limitation on liability were enacted for unincorporated associations.

However, officers and directors are not immune from being sued, or from the costly litigation to defend against such suits. The degree to which officers and directors (or other association representatives – elected, appointed, or volunteers) are protected from liability by these provisions has yet to be tested in the courts. And while these individuals may qualify for immunity from liability risk under these provisions, the association itself may not be immune. Furthermore, if an association's bylaws contain a

[28] Community Association Insurance, CAI-GAP Report #4, pub. by Community Associations Institute, Alexandria, VA, 4th Ed., 1997, pg. 26.

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mandate to protect its directors and officers (or others) from personal liability for their actions, the association must bear the expense of defending its officers and representative(s). The employees of a contracted property management company have, or can be required by the terms of a management services contract to have, their own professional liability policy separate from that of the association.

Many associations provide for the indemnification of board members and other representatives of the association by purchasing a D and O policy which can be written as part of an association's commercial package policy or on a stand alone basis. It is critical to recognize that there is no uniform contract of insurance for directors and officers liability coverage, as there is for other types of coverage. Although there are similarities among the many available policies, there are also significant differences, and no standard forms; all have varied limitations, exclusions, options and endorsements. The definition of who is insured is one of the most important differences between Directors policies. In addition to a standard deductible, some D and O policies include a percentage copay by the insured, which usually can be waived for a corresponding increase in the premium. Legal defense costs are normally within D and O policy limits and not a supplemental benefit as with Comprehensive General Liability policies. The insurer may or may not have a duty to defend (the insured association or officer), but, if so, it will usually also retain the right to select legal counsel and to settle claims (out of court) prior to trial. Some of the other more significant exclusions in most D and O policies include:[29]

- insurance decisions
- contractual liability
- theft and dishonesty
- property damage
- libel and slander
- non-monetary damages
- insured vs. uninsured
- willful misconduct
- bodily injury
- discrimination and civil rights

Directors and Officers policies are often purchased in $1 million increments. Premium rates are competitive and should be based, in part, on the size or number of members of the association. The limit of liability payable for all claims may not exceed the limit stated on the declaration page of the policy during any calendar year. D and O liability coverage can be chosen to meet an association's particular circumstances and risk exposure. The association's board of directors and counsel should carefully weigh its situation and examine the exclusions, limitations and other differences between D and O policies when deciding on a specific policy and the insurance company providing the coverage, or whether D and O liability coverage is necessary.

Umbrella Liability Insurance - Umbrella liability insurance provides supplementary insurance to cover awards above the amount of an association's regular insurance and is most often purchased in $1 million increments. This may be difficult to obtain at a reasonable price, but it often covers exposures not contained in the association's regular policy, but with substantial deductibles. The amount of liability insurance needed by an

[29] Community Association Insurance, CAI-GAP Report #4, pub. by Community Associations Institute, Alexandria, VA, 1994, pg. 26.

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association will depend upon its recreational facilities, the types of association-sanctioned activities and the extent of the common properties. Liability coverage assumed by other parties, such as pool contractors, may also vary the expense for association coverage. It is advisable for an association to attempt to reduce its risk exposure by working with its insurance company to eliminate any hazards present in the community. Many insurance companies are now refusing liability coverage for swimming pools with diving boards, amenities such as hot tubs or saunas, and other risks they view as likely to generate very large claims. Often, proper posting of signs, proper fencing, or the elimination of association sponsorship of an activity can reduce an insurance premium. For example, an association with a lake or pond may find that its insurance liability is reduced if it prohibits the more hazardous uses of the water, such as for swimming and skating, and limits sanctioned activities to boating and fishing. Similarly adoption and enforcement of sound rules or regulations with respect to use of any association facilities should be a plus in reducing risk and the expense of insurance.

Additional Insurance Considerations for Condominium Associations:

Insurance requirements are more complex for condominiums than for property owners' associations because of the joint ownership, the type of structure, and extent of the common area(s). Condominium documents are usually very explicit as to the amounts and types of insurance that must be maintained. These requirements should be very carefully reviewed to make certain that any insurance purchased is in compliance with them. A condominium association may also investigate insuring the appliances and kitchen and bathroom fixtures in the individual units, as this coverage will be cheaper under the condominium's basic policy coverage than if obtained by individual owners. In addition to the exclusions and endorsements noted in the previous discussion, a condominium association may include the following provisions in its insurance policies:

- an "include-exclude" provision which makes the association's policy the master policy in cases where the association and unit owner have duplicate coverage;

- a waiver of the right of the insurer to repair or rebuild after a loss if a decision is made by the association, pursuant to the Condominium Act and condominium bylaws, not to rebuild the condominium. (The waiver should also provide that the insurance company will pay the full amount of the insurance as if a total loss had occurred); and

- an endorsement that the insurance purchased conforms to the requirements of the documents regardless of the limitations in the policy.

Fidelity Bond - As association's documents may require the purchase of a fidelity bond to cover a financial loss incurred due to fraudulent or dishonest acts committed by an officer, director, trustee, employee or management agent. Even if not required, it is

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prudent for an association to bond those who have access to association funds. Some association's documents require that the bond be in an amount equal to one and one-half year's operating expenses, including reserves. If the bond value is not stipulated in the association documents, a fidelity bond value equal to the amount of three-months' assessments plus the total reserve funds on hand is generally adequate.[30] At the very least, the fidelity bond value should equal the maximum amount of funds, including reserves, on hand at any given time.

It is important to note that fidelity bond coverage is very specific and limited; much more so than Comprehensive General Liability coverage. An association is adequately protected against theft or embezzlement of funds only if the fidelity policy is correctly written to specifically include every person having access to association funds. There is no standard language that covers all situations; therefore, an association must ensure that all positions in the organization having access to association funds are specifically named or otherwise identified. Recently, several nationwide management companies have "closed shop" due to financial difficulty. Some associations which had contracted with these companies have now found their own reserve funds to be seriously depleted or missing altogether. Because management company officers who had access to the association accounts were not specifically named in the fidelity bonds, the insurance coverage will not reimburse the associations. Additional sources of information about association insurance include:

- Community Association Insurance, GAP Report #4, 4th Edition, 1997; from Community Associations Institute, 1630 Duke Street, Alexandria, Virginia 22314, (703) 548-8600, or at http://www.caionline.org

Worker's Compensation - The Virginia Worker's Compensation Act requires corporations (common interest community associations), firms, or persons that regularly employ three or more full or part-time employees to furnish worker's compensation insurance coverage at no cost to the employee. Worker's compensation pays medical benefits, death benefits, and weekly income to any employee who is injured while working. Employers of fewer than three regular employees, by mutual consent of their employees, can elect to be bound by the Virginia Worker's Compensation Act which is administered by the Virginia Workers' Compensation Commission, online at http://www.vwc.state.va.us, or at:

Statewide	Northern Virginia
P. O. Box 1794	P. O. Box 20246
Richmond, VA 23214	Alexandria, VA 22320
(804) 367-8600.	(703) 518-8055
1-877-664-2566 (toll free)	

[30] Community Association Insurance, CAI-GAP Report #4, pub. by Community Associations Institute, Alexandria, VA, 4th Ed., 1997, pg. 17.

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Legal Assistance:

An association consults a professional advisor for an overall picture of its financial condition and risks, but seldom engages in such introspection concerning its legal affairs. In today's litigious environment, what is right or wrong is not always evident, yet ignorance of the law is no excuse for errors and transgressions. Condominium and homeowners associations must act in accordance with the provisions of their governing documents and the laws under which they are established. Consequently, an association may want to retain an attorney to provide routine legal review of its operating procedures to assure that the association's actions are proper and to prevent future legal difficulties. This preventive approach enables an association to identify potential legal problems and situations early, and thereby minimizing legal risks while maximizing legal rights. The following are usually included in a legal status review:

- Interpretation of the association's governing documents to determine its responsibilities and powers;
- review of the association's rule enactment, assessment collection and architectural review procedures to make sure they are consistent with the governing documents, and will stand up in court if challenged;
- review of contracts to make certain the association's interests are adequately protected;
- review of insurance policies to make sure they are consistent with the requirements of the documents and provide adequate legal protection;
- preparation of a model lease or lease clause for use by owners renting their homes to protect the interests of the association by assuring that tenants are aware of their obligation to abide by the association rules and regulations;
- handling of developer-related problems concerning the common areas, or during the period of transition to owner control; and
- providing advice on unfamiliar issues that may have legal implications for the association prior to any action by the board of directors.

A legal audit should also include review of an association's enforcement procedures as applied to covenant and rules violations, and to ensure that due process requirements are met whenever an association takes action against a member. Failure to adequately provide due process requirements may not only be cause for losing an otherwise valid claim, but could be grounds for a liability claim against the directors and the association. An attorney who advises community associations should have specialized knowledge of real property law, contract law, corporation law and condo/homeowner association law. Attorneys who specialize in association law are available at the Fairfax County Bar Association's Lawyer Referral Service at (703) 246-3780 or http://www.fairfaxbar.org, the Washington Metropolitan Chapter of Community

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Associations Institute at (703) 750-3644 or http://www.caidc.org, or property management firms. Other associations can recommend an attorney or law firm who specializes in association law.

Prospective attorneys or firms should be contacted to learn their legal background, qualifications and experience with other associations. When evaluating attorneys, an association should learn:

- the attorney's attitude toward different types of associations and whether he/she usually deals with developers, lenders, and professionally managed associations;
- the attorney's fee structure, what services are provided under the basic fee, what services are extra, and the charges for each;
- other associations with which the attorney is currently working to determine their satisfaction with the attorney's or firm's services;
- if the attorney has the expertise to deal with specific problems and concerns of the association;
- which staff member of a firm will be dealing with the association and what his/her qualifications are; and
- which association documents the attorney needs in addition to the declaration, covenants, bylaws, board members, copies of resolutions and policies, meeting minutes, etc.

Different fee structures are commonly used for association legal work in this area. While the fee will depend on the type of legal work, the amount of time required, the size, age, responsibilities and type of management used by the association, an attorney may charge an annual retainer fee (often billed on a monthly basis). Such retainer may include an initial review of the association's documents and rules and regulations, the establishment of a delinquent assessment collection procedure, telephone consultations, etc., and partial coverage of the costs of such services as contract review or the filing of a personal money judgment. Another attorney who charges an annual retainer fee will charge work done for the association against the retainer and bill the association for services rendered above this amount as they are incurred. An attorney may charge an hourly rate multiplied by the amount of time required for a particular service. Still other attorneys perform an association's legal work for a flat fee or on a fee-for-service rendered basis once a relationship has been established. While some association members may question the expense of required legal counsel, generally when the fee is reviewed on a cost-per-unit-per-month basis, the legal services are seen as a reasonable expense that will help avoid situations that would otherwise involve expensive litigation or other legal difficulties.

Audit Services

A financial audit is a thorough examination of an organization's books, records and accounts to verify their accuracy and that they portray the organization's true financial status. While both the Condominium Act and the Property Owners Association Act are silent regarding

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a financial audit, the Virginia Nonstock Corporation Act does require an annual financial audit of any association that is incorporated thereunder. Whether lawfully required or not, an annual audit of an association's records is reasonable and prudent. An audit serves to protect the treasurer and/or management firm, and to assure the board of directors and members that their assessments have been handled properly and that the association is financially stable. An annual audit ensures that an association has the financial status records required by law for prospective buyers. It will include a review of the association's fiscal controls, the procedures used to handle cash receipts and disbursements, the status of the association's reserves and the worthiness of its investment policies, and a determination as to whether the association is meeting the requirements of its governing documents. An auditor may also recommend changes or improvements to the bookkeeping system and provide advice on taxes, investments, reserve funding, etc.

It is important that an auditor hired by a community association be a Certified Public Accountant who is experienced in auditing community associations, and who is knowledgeable about the financial organization and tax status of community associations. Other associations, management firms, and members of organizations such as the Community Associations Institute can provide the names of CPAs who regularly work with associations. Prior to contracting for auditor services, the association should determine the range of services it needs; understand the fee schedules; and know what the audit will entail, the time period that it will cover, and when the audit report will be completed and submitted. The association should be prepared to provide the auditor with copies of the governing documents, the current operating budget, and financial data about the association.

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Form **1120-H**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Homeowners Associations

OMB No. 1545-0127

2001

For calendar year 2001 or tax year beginning , 2001, and ending , 20

Use IRS label. Otherwise, please print or type.	Name	Employer identification number (see page 4)
	Number, street, and room or suite no. (If a P.O. box, see page 4.)	Date association formed
	City or town, state, and ZIP code	

Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change (4) ☐ Amended return

A Check type of homeowners association: ☐ Condominium management association ☐ Residential real estate association ☐ Timeshare association

B	Total exempt function income. Must meet 60% gross income test (see instructions)	B		
C	Total expenditures made for purposes described in 90% expenditure test (see instructions)	C		
D	Association's total expenditures for the tax year (see instructions)	D		
E	Tax-exempt interest received or accrued during the tax year	E		

Gross Income (excluding exempt function income)

1	Dividends	1		
2	Taxable interest	2		
3	Gross rents	3		
4	Gross royalties	4		
5	Capital gain net income (attach Schedule D (Form 1120))	5		
6	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)	6		
7	Other income (excluding exempt function income) (attach schedule)	7		
8	**Gross income** (excluding exempt function income). Add lines 1 through 7	8		

Deductions (directly connected to the production of gross income, excluding exempt function income)

9	Salaries and wages	9		
10	Repairs and maintenance	10		
11	Rents	11		
12	Taxes and licenses	12		
13	Interest	13		
14	Depreciation (attach Form 4562)	14		
15	Other deductions (attach schedule)	15		
16	**Total deductions.** Add lines 9 through 15	16		
17	Taxable income before specific deduction of $100. Subtract line 16 from line 8	17		
18	Specific deduction of $100	18	$100	00

Tax and Payments

19	**Taxable income**. Subtract line 18 from line 17	19		
20	Enter 30% of line 19. (Timeshare associations, enter 32% of line 19.)	20		
21	Tax credits (see instructions)	21		
22	**Total tax.** Subtract line 21 from line 20. See instructions for recapture of certain credits	22		
23	**Payments:** **a** 2000 overpayment credited to 2001	23a		
	b 2001 estimated tax payments	23b		
	c Total ▶	23c		
	d Tax deposited with Form 7004	23d		
	e Credit for tax paid on undistributed capital gains (attach Form 2439)	23e		
	f Credit for Federal tax on fuels (attach Form 4136)	23f		
	g Add lines 23c through 23f	23g		
24	**Tax due**. Subtract line 23g from line 22. See instructions for depository method of tax payment	24		
25	**Overpayment**. Subtract line 22 from line 23g	25		
26	Enter amount of line 25 you want: **Credited to 2002 estimated tax ▶** **Refunded ▶**	26		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer Date ▶ Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ **Yes** ☐ **No**

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN	
		Phone no. ( )	

For Paperwork Reduction Act Notice, see instructions on page 4.

Cat. No. 11477H Form **1120-H** (2001)

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Changes To Note

- The association may need to mail its return to a different service center this year because the IRS has changed the filing location for several areas. See **Where To File** on page 3.
- If the corporation wants to allow the IRS to discuss its 2001 tax return with the paid preparer who signed it, check the "Yes" box in the area where the officer of the corporation signed the return. See page 3 for details.

How To Get Forms and Publications

Personal computer. You can access the IRS Web Site 24 hours a day, 7 days a week at **www.irs.gov** to:

- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by e-mail.

You can also reach us using file transfer protocol at **ftp.irs.gov.**

CD-ROM. Order **Pub. 1796,** Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- The Internal Revenue Bulletin.

Buy the CD-ROM on the Internet at **www.irs.gov/cdorders** from the National Technical Information Service (NTIS) for $21 (no handling fee), or call **1-877-CDFORMS** (1-877-233-6767) toll free to buy the CD-ROM for $21 (plus a $5 handling fee).

By phone and in person. You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676). You can also get most forms and publications at your local IRS office.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A homeowners association files Form 1120-H as its income tax return to take advantage of certain tax benefits. These benefits, in effect, allow the association to exclude exempt function income (defined below) from its gross income.

Electing To File Form 1120-H

A homeowners association elects to take advantage of the tax benefits provided by section 528 by filing a properly completed Form 1120-H. The election is made separately for each tax year and generally must be made by the due date, including extensions, of the income tax return.

See Regulations section 301.9100-2 for information on a 12-month extension of time to make the election. This extension does not extend the time to pay the tax. Once Form 1120-H is filed, the association cannot revoke its election for that year unless the IRS consents. The association may request IRS consent by filing a ruling request. A user fee must be paid with all ruling requests. For more information on ruling requests, see Rev. Proc. 2001-1, 2001-1 I.R.B. 1.

If the association does not elect to use Form 1120-H, it must file the applicable income tax return (Form 1120, etc.).

A homeowners association should compare its total tax computed on Form 1120-H with its total tax computed on either **Form 1120,** U.S. Corporation Income Tax Return, or **Form 1120-A,** U.S. Corporation Short-Form Income Tax Return. The association may file the form that results in the lowest tax.

Note: *The taxable income of a homeowners association that files its tax return on Form 1120-H is taxed at a flat rate of 30% for condominium management associations and residential real estate associations. The tax rate for timeshare associations is 32%. These rates apply to both ordinary income and capital gains.*

If the association is tax exempt under section 501(a), **do not** file Form 1120-H. See section 6033 and related regulations. If the association loses its exempt status, see Regulations section 1.528-8(e).

Definitions

Homeowners association. There are three kinds of homeowners associations:

1. A **condominium management association** organized and operated to acquire, build, manage, maintain, and care for the property in a condominium project substantially all of whose units are homes for individuals.

2. A **residential real estate management association** organized and operated to acquire, build, manage, maintain, and care for a subdivision, development, or similar area substantially all of whose lots or buildings are homes for individuals.

3. A **timeshare association** (other than a condominium management association), organized and operated to acquire, build, manage, maintain, and care for the property that has members who hold a timeshare right to use, or a timeshare ownership interest in, real property of the timeshare association. A timeshare asociation cannot be a condominium mangagment association.

See Regulations section 1.528-4 for information regarding the "substantially all" test for condominium management associations and residential real estate management associations.

To qualify as a homeowners association, the following must apply.

- At least 60% of the association's gross income for the tax year must consist of exempt function income (see below).
- At least 90% of the association's expenses for the tax year must consist of expenses to acquire, build, manage, maintain, or care for its property, and, in the case of a timeshare association, for activities provided to, or on behalf of, members of the timeshare association.
- No private shareholder or individual can profit from the association's net earnings except by acquiring, building, managing, or caring for association property or by a rebate of excess membership dues, fees, or assessments.
- The association must file Form 1120-H to elect under section 528 to be treated as a homeowners association.

Association property. Association property includes real and personal property that:

1. The association holds,

2. The association's members hold in common,

3. The association's members hold privately within the association, and

4. Is owned by a governmental unit and is used to benefit the unit's residents.

The timeshare association or its members have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.

For more information, see Regulations section 1.528-3.

Taxable income. Taxable income is the excess, if any, of:

1. Gross income for the tax year, excluding exempt function income, over

2. Allowed deductions directly connected with producing any gross income except exempt function income. Allowed deductions include a specific $100 deduction. The following are not allowed:

- Net operating loss deduction (section 172).
- Deductions under Part VIII of subchapter B (special deductions for corporations).

If facilities are used (or personnel are employed) for both exempt and nonexempt purposes, see Regulations section 1.528-10.

Exempt function income. Exempt function income consists of membership dues, fees, or assessments from **(a)** owners of condominium housing units, **(b)** owners of real property in the case of a residential real estate management association, or **(c)** owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association. This income must come from the members as owners, not as customers, of the association's services.

Assessments or fees for a common activity qualify but charges for providing services do not qualify.

Examples. In general, exempt function income includes assessments made to:

1. Pay principal, interest, and real estate taxes on association property.

2. Maintain association property.

3. Clear snow from public areas and remove trash.

Income that is **not** exempt function income includes:

1. Amounts that are not includible in the organization's gross income other than under section 528 (for example, tax-exempt interest).

2. Payments from nonmembers.

3. Payments from members for special use of the organization's facilities, apart from the use generally available to all members.

4. Interest on amounts in a sinking fund.

5. Payments for work done on nonassociation property.

6. Members' payments for transportation.

For more information, see Regulations section 1.528-9.

When To File

Generally, an association must file Form 1120-H by the 15th day of the 3rd month after the end of the tax year.

If the due date falls on a Saturday, Sunday, or legal holiday, the association may file on the next business day.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. See the instructions for Form 1120 for details.

Extension. File **Form 7004,** Application for Automatic Extension of Time To File Corporation Income Tax Return, to request a 6-month extension of time to file.

Who Must Sign

The return must be signed and dated by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other association officer (such as a tax officer) authorized to sign. Receivers, trustees, or assignees must sign and date any return filed on behalf of an association.

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If an association officer completes Form 1120-H, the paid preparer's space should remain blank. Anyone who prepares Form 1120-H but does not charge the association should not sign the return. Generally, anyone who is paid to prepare the return must sign it and fill in the "Paid Preparer's Use Only" area.

The **paid preparer** must complete the required preparer information and—

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the taxpayer.

Where To File

File the association's return at the applicable IRS address listed below.

If the association's principal business or office is located in:	Use the following Internal Revenue Service Center address:
Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin	Cincinnati, OH 45999-0012
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming	Ogden, UT 84201-0012
Outside the United States	Philadelphia, PA 19255-0012

Paid Preparer Authorization

If the association wants to allow the IRS to discuss its 2001 tax return with the paid preparer who signed it, check the "Yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Paid Preparer's Use Only" section of the association's return. It does not apply to the firm, if any, shown in that section.

If the "Yes" box is checked, the association is authorizing the IRS to call the paid preparer to answer any questions that may arise during the processing of its return. The association is also authorizing the paid preparer to:

- Give the IRS any information that is missing from the return,
- Call the IRS for information about the processing of the return or the status of any related refund or payment(s), and
- Respond to certain IRS notices that the association has shared with the preparer about math errors, offsets, and return preparation. The notices will not be sent to the preparer.

The association is not authorizing the paid preparer to receive any refund check, bind the association to anything (including any additional tax liability), or otherwise represent the association before the IRS. If the association wants to expand the paid preparer's authorization, see **Pub. 947,** Practice Before the IRS and Power of Attorney.

The authorization cannot be revoked. However, the authorization will automatically end no later than the due date (without extensions) for filing the association's 2002 tax return.

Other Forms and Statements That May Be Required

The association may have to file some of the following. See the form for more information.

Form W-2, Wage and Tax Statement and **Form W-3,** Transmittal of Wage and Tax Statements. Use these forms to report wages, tips, and other compensation, withheld income, social security, and Medicare taxes for employees.

Form 940 or Form 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return. The association may be liable for FUTA tax and may have to file Form 940 or Form 940-EZ if either of the following applies.

- It paid wages of $1,500 or more in any calendar quarter in 2000 or 2001, or
- It had at least one employee who worked for the association for some part of a day in 20 or more different weeks in 2000 or 20 or more different weeks in 2001.

Form 941, Employer's Quarterly Federal Tax Return. File this form quarterly to report income tax withheld and employer and employee social security/Medicare taxes.

Form 945, Annual Return of Withheld Federal Income Tax. File this form to report income tax withheld from nonpayroll distributions or payments.

Form 1098, Mortgage Interest Statement. Use this form to report the receipt of $600 or more of mortgage interest (including points) in the course of the association's trade or business.

Forms 1099-A, B, DIV, INT, MISC, and S. Use these information returns to report acquisitions and abandonments of secured property, proceeds from broker and barter exchange transactions, certain dividends and distributions, interest income, miscellaneous income (e.g., payments to providers of health and medical services; miscellaneous income payments and nonemployee compensation), and proceeds from real estate transactions. Also use these returns to report amounts that were received as a nominee on behalf of another person.

For more information, see the Instructions for Forms 1099, 1098, 5498, and W-2G.

Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business. Use this form to report the receipt of more than $10,000 in cash or foreign currency in one transaction or in a series of related transactions.

Assembling the Return

Attach **Form 4136,** Credit for Federal Tax Paid on Fuels, to Form 1120-H. Attach schedules in alphabetical order and additional forms in numerical order after Form 4136.

Complete every applicable entry space on Form 1120-H. Do not write "See Attached" instead of completing the entry spaces. If more space is needed on the forms or schedules, attach separate sheets using the same size and format as the printed forms. If there are supporting statements and attachments, arrange them in the same order as the schedules or forms they support and attach them last. Show the totals on the printed forms. Also, be sure to enter the association's name and EIN on each supporting statement or attachment.

Accounting Methods

Figure taxable income using the method of accounting regularly used in keeping the association's books and records. Generally, permissible methods include cash, accrual, or any other method authorized by the Internal Revenue Code. In all cases, the method used must clearly reflect taxable income.

Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year in which **(a)** all events that determine the liability have occurred, **(b)** the amount of the liability can be figured with reasonable accuracy, and **(c)** economic performance takes place with respect to the expense. There are exceptions for recurring items. See section 461(h) and the related regulations for the rules for determining when economic performance takes place.

Generally, the association must get IRS consent to change the method of accounting used to report taxable income (for income as a whole or any material item). To do so, it must file **Form 3115,** Application for Change in Accounting Method. For more information, get **Pub. 538,** Accounting Periods and Methods.

Change of Tax Year

Generally, an association must get the consent of the IRS before changing its tax year by filing **Form 1128,** Application To Adopt, Change, or Retain a Tax Year. However, under certain conditions, an association may change its tax year without getting the consent. See Regulations section 1.442-1 and Pub. 538.

Rounding Off to Whole Dollars

The association may show amounts on the return and accompanying schedules as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

Depository Method of Tax Payment

The association must pay the tax due in full no later than the 15th day of the 3rd month after the end of the tax year. The two methods of depositing association income taxes are discussed below.

Electronic Deposit Requirement

The association must make electronic deposits of **all** depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS) in 2002 if:

- The total deposits of such taxes in 2000 were more than $200,000 or
- The association was required to use EFTPS in 2001.

If the association is required to use EFTPS and fails to do so, it may be subject to a 10% penalty. If the association is not required to use EFTPS, it may participate voluntarily. To enroll in or get more information about EFTPS, call 1-800-555-4477 or 1-800-945-8400 or visit the EFTPS website at www.eftps.gov.

Depositing on time. For EFTPS deposits to be made timely, the association must initiate the transaction at least 1 business day before the date the deposit is due.

Deposits With Form 8109. If the association does not use EFTPS, deposit association income tax payments (and estimated tax payments) with **Form 8109,** Federal Tax Deposit Coupon. If you do not have a preprinted Form 8109, use Form 8109-B to make deposits. You can get this form by calling 1-800-829-1040. Be sure to have your EIN ready when you call.

Do not send deposits directly to an IRS office; otherwise, the association may have to pay a penalty. Mail or deliver the completed Form 8109 with the payment to an authorized depositary, i.e., a commercial bank or other financial institution authorized to accept Federal tax deposits. Make checks or money orders payable to the depositary.

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To help ensure proper crediting, write the association's EIN, the tax period to which the deposit applies, and "Form 1120-H" on the check or money order. Be sure to darken the "1120" box on the coupon. Records of these deposits will be sent to the IRS.

If you prefer, you may mail your coupon and payment to Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, MO 63197. Make check or money order payable to "Financial Agent."

For more information on deposits, see the instructions in the coupon booklet (Form 8109) and **Pub. 583,** Starting a Business and Keeping Records.

Caution: *If the association owes tax when it files Form 1120-H, do not include the payment with the tax return. Instead, mail or deliver the payment with Form 8109 to an authorized depositary, or use EFTPS, if applicable.*

Estimated Tax, Alternative Minimum Tax, and Certain Tax Credits

These items do not apply to homeowners associations electing to file Form 1120-H. See the instructions for line 21 below for a list of the tax credits that do not apply. However, a homeowners association that does **not** elect to file Form 1120-H may be required to make payments of estimated tax. Because the election **is not** made until the return is filed, Form 1120-H provides lines for estimated tax payments and the crediting of overpayments against estimated tax if payments or overpayments apply.

Interest and Penalties

Interest. Interest is charged on taxes paid late even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatement of tax from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

Penalty for late filing of return. In addition to losing the right to elect to file Form 1120-H, a homeowners association that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is over 60 days late is the smaller of the tax due or $100. The penalty will not be imposed if the association can show that the failure to file on time was due to reasonable cause. Associations that file late must attach a statement explaining the reasonable cause.

Penalty for late payment of tax. An association that does not pay the tax when due generally may be penalized ½ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the association can show that the failure to pay on time was due to reasonable cause.

Other penalties. Other penalties can be imposed for negligence, substantial understatement of tax, and fraud. See sections 6662 and 6663.

Specific Instructions

Period covered. File the 2001 return for calendar year 2001 and fiscal years that begin in 2001 and end in 2002. For a fiscal year return, fill in the tax year space at the top of the form.

Note: *The 2001 Form 1120-H may also be used if (a) the association has a tax year of less than 12 months that begins and ends in 2002 and (b) the 2002 Form 1120-H is not available at the time the association is required to file its return. However, the association must show its 2002 tax year on the 2001 Form 1120-H and must incorporate any tax law changes that are effective for tax years beginning after 2001.*

Address. Include the suite, room, or other unit number after the street address. If a pre-addressed label is used, include this information on the label.

If the Post Office does not deliver mail to the street address and the association has a P.O. box, show the box number instead of the street address.

Note: *If a change in address occurs after the return is filed, the association can use* ***Form 8822,*** *Change of Address, to notify the IRS of the new address.*

Employer identification number (EIN). Show the correct EIN in the space provided. If the association does not have an EIN, it should apply for one on **Form SS-4,** Application for Employer Identification Number. If the association has not received its EIN by the time the return is due, write "Applied for" in the space for the EIN. See Pub. 583 for details.

Final return, name change, address change, or amended return.

- If the association ceases to exist, file Form 1120-H and check the "Final return" box.
- If the association has changed its address since it last filed a return, check the box for "Address change."
- If the association changed its name since it last filed a return, check the box for "Name change."
- To amend a previously filed Form 1120-H, file a corrected Form 1120-H and check the "Amended return" box.

Item B—60% exempt function income test. At least 60% of the association's gross income for the tax year must consist of exempt function income (see **Definitions** on page 2).

Item C—90% expenditure test. At least 90% of the association's expenditures for the tax year must consist of expenses to acquire, build, manage, maintain, and care for property, and in the case of a timeshare association, for activities provided to, or on behalf of, members of the timeshare association. Include current and capital expenditures. Use the association's accounting method to figure the total.

Include:

1. Salary for an association manager or secretary.

2. Expenses for gardening, paving, street signs, security guards, and property taxes assessed on association property.

3. Current operating and capital expenditures for tennis courts, swimming pools, recreation halls, etc.

4. Replacement costs for common buildings, heating, air conditioning, elevators, etc.

Do not include expenditures for property that is not association property. Also, do not include investments or transfers of funds held to meet future costs. An example would be transfers to a sinking fund to replace a roof, even if the roof is association property.

Item D. Enter the association's total expenditures for the tax year including those expenditures directly related to exempt function income. Use the association's accounting method to figure the entry for item D.

Item E. Show any tax-exempt interest received or accrued. Include any exempt-interest dividend received as a shareholder in a mutual fund or other regulated investment company.

Line 21—Tax credits. The association may qualify for the following tax credits:

Foreign tax credit. See **Form 1118,** Foreign Tax Credit—Corporations.

Credit for fuel produced from a nonconventional source. See section 29 for a definition of qualified fuels, provisions for figuring the credit, and other special rules.

Qualified electric vehicle credit. See **Form 8834,** Qualified Electric Vehicle Credit, and section 30.

The general business credit (but not the investment credit, the Indian employment credit, the work opportunity credit, the welfare-to-work credit, or the empowerment zone employment credit). See **Form 3800,** General Business Credit.

Note: *The association may not claim the qualified zone academy bond credit.*

Enter the total amount of credits on line 21 and attach the appropriate form(s).

Line 22. If the association must recapture any of the low-income housing credit (or the qualified electric vehicle credit), include the amount of the recapture in the total for line 22. To the right of the entry space, write "LIH recapture" (or "QEV recapture") and the amount. See **Form 8611,** Recapture of Low-Income Housing Credit, and section 42(j) for more details. See Regulations section 1.30-1 for details on how to figure the recapture for the qualified electric vehicle credit.

Backup withholding. If the association had income tax withheld from any payments it received, because, for example, it failed to give the payer its correct EIN, include this amount in the total for line 23g. This type of withholding is called "Backup Withholding." Show the amount withheld in the blank space in the right-hand column between lines 22 and 23g, and write "Backup Withholding."

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	11 hr., 43 min.
Learning about the law or the form	5 hr., 19 min.
Preparing the form	13 hr., 12 min.
Copying, assembling, and sending the form to the IRS	2 hr., 9 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the tax form to this office. Instead, see **Where To File** on page 3.

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Chapter 7 - FINANCIAL PROCEDURES

It is imperative for an association to have accurate and up-to-date information about its finances to protect the interests of association members by making certain that all monies due are collected, all bills are paid, and no loss is incurred through error or dishonesty. This chapter discusses assessment billing and collection, and describes general record keeping procedures for handling cash receipts and disbursements.

The Property Owners' Association Act and the Condominium Act each require association finance books and records to be kept "in accordance with generally accepted accounting practices." Accurate, up-to-date financial records are essential to keep the board of directors and association members informed about association finance. These records document expenditures for tax purposes and exemption, track the association's cash flow and financial status, and assist in taking action against a resident(s) for unpaid assessments. In most associations, the treasurer has specific responsibility for maintaining the association's financial records and accounts and preparing its financial statements when needed. Some associations allow the treasurer to perform all bookkeeping tasks, but most associations include routine billing and maintenance of financial records in a property management contract, or retain an accounting firm or another professional.

Accounting Systems:

An association must have a reliable accounting system in order to maintain accurate and complete records. The purpose of an accounting system is to record, sort, and summarize an association's financial transactions and to provide the organized information that is needed to prepare an association's financial statements. The board of directors should be familiar with the accounting system.

There are two common types of accounting systems, the cash system and the accrual system. The cash system records income and disbursements as they occur and basically shows an association if it has enough cash to pay its current bills. The accrual system records expenses as they are incurred and income when it is due, whether or not cash was actually received or disbursed. The accrual system is more complex to maintain than the cash system, but it gives an association a more comprehensive picture of its financial situation. The difference between these two systems is most obvious for pre-paid expenses such as insurance. If an association pays its insurance premium once a year, the cash method of accounting will record the entire insurance premium as an expense during the accounting period it was paid. The accrual system shows one twelfth of the insurance premium as a paid expense for each month covered by the premium, even though it is not paid each month.

Accounting systems usually utilize several records in which financial transactions are recorded. These include journals, which are a chronological record of financial transactions, and ledgers, which record specific categories of financial transactions. Ledgers are usually organized through the use of individual "accounts." which classify each type of transaction under a broad

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category. For example, asset accounts, liability accounts, revenue accounts and expense accounts are common types in a ledger. An association's accounts should correspond to the categories outlined in the association's budget, so that its periodic financial statements are comparable to its budget projections. Because size, maintenance needs, and annual expenses vary considerably from one association to another, it is strongly advisable for an association to seek the advice of a professional accountant to determine the best type of accounting system and records for the association. In addition to contemporary hardcopy references in libraries or accounting offices, software developers have customized records, spreadsheets and accounting charts to meet the accounting needs of homeowner and condominium associations.

Financial Statements:

An association's financial statements depend upon the type of accounting system used. The cash system often uses only a statement of income and expenses, while the accrual system additionally requires a balance sheet and a cash flow statement.

Statement of Income and Expenses - A statement of income and expenses lists the income earned and the expenses incurred during a specific period of time. Some associations prepare a statement of income and expenses monthly or quarterly, depending on the financial activity of the association and the cost incurred for its preparation if it is compiled by a management or accounting firm. A statement of income and expenses should include budgeted and actual figures for the accounting period and the fiscal year to date. It should list income and expenses using the same categories as the budget. A list of all accounts receivable (e.g., delinquent assessments) and outstanding bills should accompany the statement when the cash system of accounting is used and a balance sheet is not prepared. A cash flow statement shows the actual cash received and disbursed during an accounting period, and will enable an association using the accrual system to know the amount of cash available at a specific point in time.

Balance Sheet - A balance sheet lists an association's assets, liabilities and members' equity as of a specific point in time. An association's assets will generally include its cash on hand, accounts receivable, and the value of its property and equipment. Its liabilities will usually consist of outstanding bills, accrued taxes, etc. Members' equity will reflect the value of the property to members after all liabilities have been subtracted.

Record Keeping Procedures - When handling income received and payments made, an association needs to follow good accounting practices to protect the association against financial loss due to dishonesty or error. Since owner assessments provide most or all of an association's income, it is important to have a good procedure to record assessment billing and collection. This usually includes the use of an individual record for each property. The record should have the owner's name, address, billing address (if necessary), and a legal description of the property. Other useful information can also be included on the record, such as the telephone number, names and ages of children, names

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of tenants, etc. During each billing period the billing date, billing amount, date the payment was received and any late charges are recorded on each individual record.

Controls are also needed for the payment of expenses incurred by the association. Each invoice received should be dated and checked for mathematical accuracy, to make sure it has not already been paid, and to make sure the item or equipment has been received. The invoice should then be noted with the number and date of the check by which it is paid, the account number charged with the expense and the name of the person who approved the payment. As each invoice is paid, it should be listed in the appropriate record and the invoice filed in the paid invoice file. Each check stub should contain the date the check was written, check number, payee, invoice number, and account number or budget category charged with the expense.

Assessment Billing and Collection - An association's governing documents outline the basis for determining the annual assessment for each unit. For most associations, the assessment is an annual charge, but the majority of owners prefer to pay monthly or quarterly. Bookkeeping time and expenses increase with this frequency of payments, but many associations have found that more frequent collection provides a better cash flow and reduces delinquencies. Frequent collection also permits an association to follow up on delinquencies more promptly. It is easier to collect past due payments for one or two months than for one or two quarters because the amount is a much more manageable sum for a member to pay.

Several methods are used for billing owners for regular assessments. Bills can be prepared and mailed to each unit owner. However, this is an expensive process. Many associations instead send each unit owner an annual notice of the regular assessment indicating when each installment is due and the owner is responsible for making timely payments. Other associations use a coupon book system, supplying coupons to be returned with each assessment payment. Both the annual notice and coupon book methods save the association time, postage and billing expenses. As incentive for timely payments, some associations discount the annual assessment if paid in its entirety and on time, or when periodic assessments are paid early or on time. Some associations give credit against the assessment for volunteer work on community projects.

It is necessary for an association to have some form of delinquent assessment procedure. Direct, personal contact with a delinquent homeowner is often sufficient reminder to obtain payment and avoid the need to take formal legal action. The board should refer to the association's legal documents for guidance in collecting delinquent assessments. If the documents do not provide sufficient guidelines, the association should adopt formal procedures to be strictly followed in all delinquencies. An attorney should review these procedures to make sure they are legally permissible. Generally, this involves a series of notices and/or letters which begin as a polite reminder and end with notice of the filing of a lien or personal money judgment against the owner. A typical sequence is as follows:

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- A notice is sent to the owner after the payment becomes delinquent, informing him/her of the delinquency and that a late charge has or may be imposed. Some associations charge interest and/or a late fee as a penalty for late payment, however, charging interest may require that the association comply with the truth-in-lending laws. Alternatively, a flat penalty can be charged for the administrative costs of a delinquent account.

- If a payment is not received after the first notice, an account statement may be sent by certified mail showing the amount due (including late fee), and warning that the account will be turned over to an attorney or collection agency.

- A third notice, from the association's attorney, may refer to legal action if payment is not received and/or a notice that a lien will be filed against the property.

Lien for Collection of Delinquent Assessments - Every association has delinquent assessment account(s); most are paid in a reasonable time, however, such debts have been permanently lost because the association failed to protect its interest in a timely manner. This can occur if the debt is not collected or secured by a lien prior to a sale transaction. An association may not even know that a (delinquent account) property is for sale until after the settlement and the opportunity to collect has passed. The association's disclosure statement regarding the status of the assessment account is for the buyer's information, and is not legally sufficient evidence of debt on the property to stop a sale transaction. However, the association will be held to the accuracy of its statement; if the association omits past due assessments and the transaction is concluded the association must "bite the bullet" and accept the consequence of its error. "Associations cannot rely upon the disclosure packet accounting to collect outstanding debts at a settlement;"[31] and the purchaser cannot be held liable for debts of the owner.

No organization, agent or business is obligated by law to collect on such delinquent accounts. Associations are solely responsible for collecting their own assessments and, if necessary, for filing a lien against the property. A lien does not guarantee payment of the outstanding debt, but it stop a property sale transaction. In most cases, this is enough leverage to force the delinquent owner to pay the outstanding debt. A lien is:

> *"....a legally recorded and enforceable charge, debt, obligation, or claim annexed to property.." (not to the owner) "...by the common law, without satisfying which, such property cannot be lawfully demanded (purchased or transferred) by another."*[32]

A lien stops or prevents the transfer or sale of the property ownership until it is removed by the association upon payment of the outstanding debt. The Virginia Property Owners'

[31] Virginia Real Estate Board, Property Registration Div.; re: Fairfax County Dept. Consumer Affairs case no. 52906, Feb. 1995.
[32] Henry Campbell Black, M.A., Black's Law Dictionary, revised 7th edition, West Pub. Co., St. Paul, Minn., 1999.

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Association Act provides for the enforcement of liens for the purpose of collecting delinquent assessments on a member property. The association President must file a "Memorandum of Lien" with the Clerk of the Circuit Court within twelve (12) months from the date the assessment was due and payable. There is no standard form, however, the "Memorandum of Lien" must include the following specific items of information:

- The name of the development, and a legal description of the lot;
- The name(s) of the owner(s) of the lot, and the date of the memorandum;
- The amount of unpaid assessments and when such payment(s) was/were due;
- The name of the property owners' association and the name and address of the person to contact to arrange for payment and release of the lien;
- A statement that the lien is being obtained in accordance with the provisions of sec. 55-508 et seq. of the Property Owners Association Act; and
- The Memorandum of Lien must be signed, under oath, by the principal officer (President only) of the association.

At least ten (10) days prior to filing with the Circuit Court, a notice must sent by certified mail to the property owner(s) stating the association's intent to file a lien against the property. A notice of the lien must also be sent to any holder of a credit line deed of trust on the property as if there were a court judgment against the owner. Additional information is available from the Clerk of the Circuit Court at (703) 246-2329.

Every request for a disclosure package should be viewed by the association management as notice that a property is for sale, and the assessment account for that property should be checked promptly. If a delinquency exists, the disclosure packet can be withheld and a notice of intent to file a lien against the property should be delivered immediately to the owner/seller to initiate the 10-day lien notice requirement. If a lien is subsequently filed against the property, a copy of the Memorandum of Lien can then be included in the disclosure package within the allowable 14-day "window" for delivery of the disclosure package. The filing of a lien puts tremendous pressure on the delinquent owner to pay the outstanding balance, because the lien prevents completion of the sale.

Once filed, the lien must be enforced by foreclosure within 24 months from the date when the Memorandum of Lien was recorded or the association permanently loses its right to sue under that lien. The lien will, however, remain on the books. The lien for assessments will be paid at the transaction settlement ahead of all subsequent liens or encumbrances except real estate tax liens, mechanics' or materialmens' liens, any mortgages or deed of trust, or other liens and encumbrances recorded prior to the lien for assessments. The Act also provides, without limitation, reimbursement for costs and reasonable attorney's fees, (including litigation in court), together with interest at the maximum lawful rate for sums secured by the lien. Filing a lien does not preclude filing suit for a personal money judgment on a debt owed to the association as an alternative to lien foreclosure. Any collection procedure should allow the Board of Directors to use discretion in hardship cases, although it is not an option of the Board to "forgive" an

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assessment. The association's reminder and delinquent notices might include a statement requesting that the owner contact the Board and attempt to work out a payment arrangement if a personal hardship is causing the delinquency. Most associations' governing documents and/or bylaws permit the suspension of a member's voting rights and/or access to and use of recreational facilities, or other services and privileges during the period that the owner(s) is/are delinquent. Some documents permit an association to accelerate payments, requiring that the entire annual assessment be paid in full when an account is past due. The threat of accelerating the assessment is often very effective in producing a past due assessment, as the amount of money involved is frequently substantial.

One problem encountered in assessment collection is maintaining an accurate, up-to-date list of all association members, their contact address, and phone number, particularly for absentee owners. Absentee owners can often be located by the County Office of Tax Assessments. Associations should require all owners to notify the management when they are selling their property, and new owners should be identified by the association from requests for disclosure packets. Associations can use several other means and sources to track property sales including:

- contact with mortgage lenders, real estate agents or settlement attorneys;
- monitoring of county real estate transfer records;
- block or neighborhood captains can make note of "For Sale" signs; and
- providing a free "For Sale" listing in the community association newsletter.

Associations hesitate to take legal action as the cost may be more than the delinquency and/or amount of the judgment. However, occasional but prompt legal action shows that the association is serious about assessment collection, which has the effect of reducing the number of delinquent accounts.

Securing Association Assets:[33]

The primary responsibility for the safekeeping of the association's assets rests directly upon the board of directors. Although many associations contract with professional property management companies to conduct the association's day-to-day operations, including the collection and disbursement of large sums of money (and the bookkeeping therefore), the board cannot abdicate its fiduciary responsibilities. Many association board members believe it is solely the financial auditor's role to uncover weaknesses, discrepancies, and irregularities in the association's financial system during the mandatory annual audit. However, an auditor is usually involved only once per year. When a financial system has unintentional loopholes, an absence of internal controls, permits "creative financing or bookkeeping", and lacks regular attention of the board, much can and has happened to association's assets between audits. Regardless of the

[33] F. James Ahlberg, "Be Alert for Irregularities", Quorum magazine, copyright by Washington Metropolitan Chapter Community Associations Institute, February, 1995; and The Role of the Association Treasurer, CAI-GAP report #22, 3rd Ed., pub. by Community Associations Institute, Alexandria, VA, 1998.

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reason(s) for irregularities or the guilt/fault of any individual(s), the board is still legally responsible, and liable. "Irregularities" generally mean the unauthorized use of association assets, primarily cash and/or investments, for purposes other than the association's business or welfare. Some associations have found irregularities in their financial operations and substantial shortages in their assets because of a breakdown in their system of checks and balances. An adequate checks and balances/internal control procedure is one that, by design, acts to test the adequacy of another procedure and should disclose irregularities so that the board of directors can take timely and corrective action. When this process breaks down, irregularities can occur.

Most associations should routinely have a good system of internal control because of the close involvement of the board of directors and the management personnel responsible for the daily operations of the association. The importance of routine board involvement in the system of internal control is fundamental; and when board involvement decreases, the chance of irregularities increases. In self-managed associations, the treasurer performs the association's bookkeeping and provides the board of directors with financial statements and other financial information. A finance committee can be helpful in performing and separating the financial tasks. In a professionally managed association, the manager usually provides the financial statements and information to the treasurer, who uses these documents to formulate his/her monthly report to the board. The monthly financial package from the manager to the treasurer should include the following:

- Balance sheet;
- Statement of income;
- Cash receipts and disbursements activity;
- Property/Unit owner account balances (delinquent and unpaid)
- General ledger activity and journal entries;
- Schedule of accounts payable; and,
- Bank reconciliation.

Irregularities in association financial affairs arise for two primary reasons: funds are temporarily "borrowed" with the intent of repayment, or funds are "appropriated" without intent of repayment. Often the "borrowed" becomes "appropriated" because the person has no means of repaying the sum. While auditors are trained to review and evaluate the strengths and weaknesses of an internal control system, the board of directors is usually not so trained. However, the following warning signs indicate the existence of weaknesses in the internal control system that could allow irregularities to develop, and should alert board members to seek appropriate corrections to safeguard the association's assets:

- Lack of or infrequent board involvement in overseeing financial activities;
- Lack of board approval of contractual commitments;

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- Lack of board review of original invoices for major expenditures;
- Lack of board review and approval to write off delinquent assessments;
- Lack of periodic (monthly, quarterly) financial statements for board review, including explanations of major variances from budget and/or prior year figures;
- Exclusion of board members as signators on investment accounts (prohibits ready access of the association to its own funds);
- Continual use of reserve cash and investment funds for operations activities;
- Lack of periodic analysis of reserve investments;
- Control of operating cash receipts and disbursements by one person;
- Control of reserve cash and investments by one person;
- Lack of dual signatures on checks, especially for large non-recurring expenditures;
- Rapid turnover and fluctuations in employment or temporary help (possible indication of fictitious or "ghost" personnel and/or vendors. Check for inclusion of names on payroll tax returns, W-2s, and employment records); and
- Billing for fictitious or excessive services; "padding," unauthorized extra work, or unapproved changes to contract work.

Note that many of these warning signs and weaknesses start with "Lack of..." which is ample indication of the importance of the board's routine, regular attention to the status of association's financial affairs. Whether an association is self-managed, employs an independent manager, or contracts for professional management services, it must have a system of internal controls in place and functioning to maintain the security of association assets. The following questions will help the directors to develop a strong internal control system:

- Are the general ledger and subsidiary ledgers balanced and posted monthly?
- Does the management company maintain adequate bonding of its employees?
- Is the association's insurance reviewed annually to ensure adequate coverage?
- Are all disbursements accounted for and paid by pre-numbered checks? Are all checks manually signed; if not, is the check-signing device adequately protected? Does someone other than the preparer mail all checks? Are voided checks retained and properly defaced to prevent fraudulent cashing?

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- Is the practice of drawing checks to "cash" prohibited? Are supporting documents for checks properly defaced or marked as "paid" to prevent reuse and/or duplication?

- Has the association set a value cap or ceiling for single-signature checks?

- Are vendor invoices checked against quantities received, prices quoted or contracted, clerical accuracy, and duplication?

- Is a purchase order system used? When paid, is the purchase order and invoice marked with reference to the check number and date paid?

- Are each day's receipts properly logged in the register and deposited intact without delay?

- Are bank reconciliations performed on a monthly basis, and reviewed by the treasurer and other board directors? Do bank reconciliation procedures include inspection of returned and cancelled checks for appropriate signatures, proper endorsements, and cross-checking of check number, date, payee and dollar amount with the association's checkbook?

- Are major contracts obtained through competitive bidding from pre-qualified contractors?

- Are banks notified immediately when an authorized check signer leaves the association or resigns from the board? Following annual elections, are newly- authorized check signatures filed with the bank(s), and past-authorized signatures retrieved and destroyed?

- Are all investments registered in the association's name, and maintained in a safe place?

- Are assessment payments promptly recorded and non-payments noted for follow-up investigation? Does the board of directors first approve all “write-offs” of unpaid property assessment balances?

- Are petty cash funds kept in a safe place, maintained at a reasonable and steady amount and reimbursed periodically, disbursed by one person, properly recorded and countersigned by recipient, and counted by someone other than the person who disburses the funds?

- Does the board of directors authorize all replacement reserve transactions?

- Are appropriate payroll records maintained including detailed, individual employee records, adequate time records, approval of pay rates and rate changes, and proper authorizations for payroll deductions?

- Are all employee tax withholdings and other association tax funds properly recorded, deposited, and paid on time?

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While it is difficult to prevent every irregularity, a system of internal controls covering the above warning signs and questions should promptly disclose such irregularities to the board's regular attention, and prevent substantial and continuing loss. Such controls and attention are the best safeguard to the security of an association's assets.

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SECTION III: APPENDIX
Technical Assistance Resources

For Information about:	Contact:
Community Associations:	
Condominium and Homeowner Associations Liaison; Complaints, disputes, state laws; "Your Community, Your Call" (Cable TV program)	Fairfax County Consumer Protection Division www.fairfaxcounty.gov/consumer/ (703) 222-8435 E-mail to: ycyc@fairfaxcounty.gov
State Laws:	
Virginia Property Owners' Assoc. Act Virginia Condominium Act; Nonstock Corporation Act,	Virginia Legislative Information System leg1.state.va.us/000/src.htm State Corporation Commission (SCC), Richmond, VA
Articles of Incorporation, Corporate Operations, Agents	www.state.va.us/scc/index.html (804) 371-9733, then 1
Common Interest Community Management Information Fund Registration Property Registration Division Enforcement Division Community Association Liaison	Virginia Real Estate Board (VREB), Richmond, VA www.state.va.us/dpor/indexie.html (804) 367-8510 (804) 367-8504 (804) 367-2941
Governing Documents:	
Condominium and Homeowners Association Declarations, CCR's,	Fairfax County Record Room, Fairfax, VA Court House, 3rd floor; (703) 691-7320, press 3,4
Deed of Dedication, Bylaws;	www.fairfaxcounty.gov/living/legal/default.htm
Subdivision site plans, design services,	Dept. of Public Works and Environmental Services
construction approvals, bond release, stormwater management.	www.fairfaxcounty.gov/gov/dpwes/homepage.htm
Environment and Facilities Review	(703) 324-1720
Environment and Facilities Inspection (Site construction complaints)	(703) 324-1950
Maintenance and Stormwater Mgmt.	(703) 934-2800
Permits Division	(703) 324-1555
Residential Inspections Division	(703) 631-5101
Site Development Services -	
Bonds and Agreements Branch	(703) 324-1590
Code Enforcement Branch	(703) 324-1937
Solid Waste Collection/Recycling	(703) 324-5230
Urban Forestry Division	(703) 324-1770

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Transition to Owner Control Real Estate Assessments; Property Ownership	Fairfax County Department of Tax Administration - Real Estate Division (703) 222-8234 www.fairfaxcounty.gov/dta/re

Fairfax County Code - Requirements and Enforcement:

Zoning information, requirements, permits, violations, complaints -	Fairfax County Dept. of Planning & Zoning www.fairfaxcounty.gov/dpz/
Zoning Administration Division	(703) 324-1374
Zoning Enforcement Branch	(703) 324-1300
Zoning Permit Review Branch	(703) 324-1359
Zoning Evaluation Division	(703) 324-1250
Health, Safety and Welfare Issues; Uniform Statewide Building Code; Sanitary standards, wells and septic systems, maintenance and repairs.	Fairfax County Health Department Environmental Health Div. www.fairfaxcounty.gov/service/hd/ehdweb.htm (703) 246-2201
Pet and animal information	Fairfax County Police Department www.fairfaxcounty.gov/ps/ac/homepage.htm
Enforcement of ordinance;	(703) 324-0210
Animal Shelter	(703) 830-1100

Insurance:

Regulation of companies and agents; Consumer information:	State Corporation Commission, Richmond, VA Bureau of Insurance www.state.va.us/scc/consinfo.htm
Property and Casualty Div.	(804) 371-9185
Life and Health Division	(804) 371-9691

Utilities:

County streetlights program installation criteria; Planning, Engineering Division	Dept. of Public Works & Environmental Services www.fairfaxcounty.gov/dpwes/homepage.htm (703) 324-5800
Electric outdoor lighting program (private streets - residential & commercial buildings).	Dominion Virginia Power Company www.dom.com/index.jsp, or (888) 667-3000; E-mail: Customer_Service@dom.com
Maintenance of gas pipes, installations, or customer services; Customer Service Office	Washington Gas www.washingtongas.com (703) 750-1000 or (800) 752-7520
Pipeline Safety Division OK Staff, Program Areas:	Transportation Safety Institute -Oklahoma City, www.tsi.dot.gov/divisions/pipeline/pipeline.htm (405) 954-7219
Educational materials and training packages.	American Gas Association – Washington, D.C. www.aga.org or (202) 824-7000

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Water and sewer services:

Customer Service	Fairfax County Water Authority - Merrifield, VA www.fcwa.org/customer/index.htm or (703) 698-5800 Vienna Water/Sewer - Vienna, VA www.ci.vienna.va.us/Town_Services/water_sewer.htm (703) 255-6385
	Fairfax City, VA Department of Transit Utilities – www.fairfaxva.gov/Services/Utilities/utilities.htm (703) 385-7915
	Falls Church Water/Sewer - Falls Church, VA www.ci.falls-church.va.us/services/index.html#water
Administration	(703) 248-5070
Customer Service	(703) 248-5071 (water and sewer billing)
Emergencies	(703) 248-5044 (after 5 p.m. weekends and holidays)
	Herndon Water & Sewer
Public works - Information customer service desk	www.town.herndon.va.us (703) 435-6853

Electric Service Providers:

Dominion Virginia Power – Fairfax, VA
11133 West Main Street, Fairfax, VA 22030
www.dom.com/index.jsp or (703) 934-9670

Northern Va. Electric Cooperative – Manassas, VA
(NOVEC); www.novec.com
(703) 335-0500; or Toll-Free: (888) 335-0500
E-mail to: info@novec.com

Trash Collection & Recycling:

Fairfax County trash service; information, applications; private trash collection.	Dept. of Public Works & Environmental Services Division of Solid Waste Collection & Recycling http://www.fairfaxcounty.gov/dpwes/trash/coll_service.htm (703) 324-5230
Herndon Dept. of Public Works	(703) 435-6853.

Lawn and Garden Landscaping:

Soil Science Office	Dept. of Public Works & Environmental Services www.fairfaxcounty.gov/dpwes/environmental/soil.htm (703) 324-5300
Environmental Horticulture	Virginia Cooperative Extension in Fairfax County (703) 324-8556 or www.ext.vt.edu
Soil types and characteristics.	Northern Virginia Soil and Water Conservation Svc. www.fairfaxcounty.gov/nvswcd/default.htm (703) 324-1460

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Recreation -
Construction and Maintenance:

Parks, facilities, programs, maintenance responsibilities, Adopt-A-Park/Field.	Fairfax County Park Authority www.fairfaxcounty.gov/parks/parks.htm
Administration	(703) 324-8785
Park Operations Division	(703) 324-8591
Customer/Program Svc.	(703) 324-8564
	Northern Virginia Regional Park Authority
General Information	www.nvarpa.org or (703) 352-5900
Public Information	(703) 359-4603
Swimming pools, health code, sanitary standards, maintenance and repairs.	Fairfax County Health Department www.fairfaxcounty.gov/service/hd/ehdweb.htm Environmental Health Division - (703) 246-2300
Technical information.	National Spa & Pool Institute www.nspi.org or (703) 838-0083
Certified Pool/Spa course, Operator's Handbook.	National Swimming Pool Foundation www.nspf.com or (210) 525-1227
Pool operation courses (local)	Northern Virginia Community College (NOVA): www.nv.cc.va.us.
Alexandria campus	(703) 845-6200
Annandale campus	(703) 323-3000
Loudoun County campus	(703) 450-2500
Tennis and play courts, construction and maintenance. Professional industry addresses	United States Tennis Court & Track Builders Assn. www.ustctba.com www.ustctba.com/industry.html or (410) 418-4875
Organization, education, public affairs, media, etc. publications/resource materials	United States Tennis Association (USTA) www.usta.com/index.html (914) 696-7000
Playground safety	Consumer Product Safety Commission,
Safety checklist	www.cpsc.gov/kids/kidsafety/plgdlist.pdf
Library & publications	www.cpsc.gov/library/library.html or (301) 504-0990
Toll-free consumer hotline	800-638-2772

Pavement Maintenance:

Public road maintenance, snow removal, signs, hazards, etc.	Virginia Department of Transportation (VDOT) virginiadot.org/quick/nova_quick.asp
Northern Virginia District Office	(703) 383-8368
Resident Engineer	(703) 359-1220

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Storm water management	Maintenance and Stormwater Management Division www.fairfaxcounty.gov/gov/dpwes/navbar/faqs.htm#sidewks (703) 934-2800
Private streets, parking lots, Tennis and recreational courts. Publications catalogue	Asphalt Institute, Bethesda, Md. www.asphaltinstitute.org. (301) 656-5824 National Asphalt Pavement Association www.hotmix.org/index2.html or (301) 731-4748

Legal Reference:

	Fairfax County Bar Association www.fairfaxbar.org,
FCBA Judicial Center office Lawyer Referral Service	(703) 246-2740 (703) 246-3780

Taxes:

Federal tax information. forms and publications	Internal Revenue Service www.irs.gov/forms_pubs/index.html. (800) 829-1040
Virginia state tax information.	Virginia Department of Taxation www.tax.state.va.us
Virginia employer income tax No. Va. District Office	1-888 268-2829 (toll free), or (703) 359-6715
Fairfax County BPOL gross receipts tax.	Department of Tax Administration www.fairfaxcounty.gov/dta/homepage.htm (703) 222-8234
Virginia employment tax, Virginia unemployment insurance.	Virginia Employment Commission www.vec.state.va.us/index.cfm?info=about_vec (703) 803-1100, or (800) 828-1140

Homeowner Association Organizations:

These organizations provide published information, training programs, professional references, or redirect association inquiries to other knowledgeable sources	Community Associations Institute (CAI) National Office - www.caionline.org (703) 548-8600 Washington Metropolitan Chapter (WMCCAI) www.caidc.org or (703) 750-3644
Promotes opinions and consensus of citizens associations throughout Fairfax County. Enhances general welfare of citizens & communities.	Fairfax County Federation of Citizens Assoc. Inc. www.fairfaxfederation.org e-mail: president@fairfaxfederation.org (no public phone)

Community association guidance; application of laws; complaints and conflicts, state registration.	Fairfax County Consumer Protection Div. (CPD) www.fairfaxcounty.gov/consumer/ (703) 222-8435
Community Association Liaison; Information resource on regulations, laws and issues about governance and administration of associations.	Virginia Real Estate Board; Richmond, VA www.state.va.us/dpor/indexie.html (804) 367-2941
Educational resource for real estate management. Director of Public Affairs No. Va. Chapter	Institute of Real Estate Management; Chicago, IL www.irem.org (312) 329-6000 (301) 948-6234
	Northern Virginia Association of Realtors www.nvar.com or (703) 207-3200
	Urban Land Institute, Washington, DC www.uli.org or (202) 624-7000
Publishes "Newcomers Guide," and quarterly newsletter for citizens	Fairfax County Office of Public Affairs (703) 324-3187

Voluntary Programs:

"Neighborhood Watch"; safety, security, education and prevention program	Fairfax County Police Dept. Crime Prevention Coordinator www.fairfaxcounty.gov/ps/police/traf_sfty.htm (703) 246-4202
Home safety and fire prevention	Fairfax County Fire & Rescue Dept. www.fairfaxcounty.gov/ps/FR/homepage.htm
Fire Prevention Division	(703) 218-3418
Adopt-A-Park/Field	Fairfax Co. Park Authority www.fairfaxcounty.gov/parks/parks.htm (703) 246-5700
Tree planting and reforestation	Fairfax ReLeaf Office www.fairfaxcounty.gov/DPWES/environmental/ecp.htm. (703) 324-1409
Adopt-A-Highway	VDOT - Fairfax Residency www.virginiadot.org/infoservice/prog-aah-default.asp 1-800-PRIDE VA (1-800-774-3382)

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Gypsy Moth Suppression.	Dept. of Public Works & Environmental Services Forest Pest Management Program www.fairfaxcounty.gov/dpwes/environmental/pests.htm (703) 324-5304
Adopt-A-Stream.	Fairfax Co. Health Department – Environ. Services www.fairfaxcounty.gov/service/hd/ehdweb.htm (703) 246-2201
NVSWCS "Earth Team."	Northern Virginia Soil and Water Conservation Svc. www.fairfaxcounty.gov/nvswcd or (703) 324-1460

Published Information Resources

These publications provide more information and considerable technical data resources for further investigation and research when needed by association directors and members.

A. Books and Reports:

Asphalt Institute.

Thickness Design-Asphalt Pavements for Highways and Streets *(MS-1), and* Asphalt Overlays for Highway and Street Rehabilitation *(MS-17)*; The Asphalt Institute, Bethesda, MD, 1983. Available online at www.asphaltinstitute.org

Asphalt Surface Treatments-Specifications and Asphalt Surface Treatments-Construction Techniques; The Asphalt Institute, Bethesda, MD, 1983. Available online at www.asphaltinstitute.org

Community Associations Institute (CAI), Alexandria, VA

Association Management, GAP Report #1, 1998.

Architectural Control, Design Review; 4th Ed; GAP Report #2, 1998.

Transition from Developer Control; 3rd Ed; GAP Report #3, 1998.

Community Association Insurance; 4th Ed; GAP Report #4, 1997.

Assessment Collection: Legal Remedies; 3rd Ed; GAP Report #5, 2000.

Property Taxes & Homeowner Associations; 3rd Ed; GAP Report #6, 1995.

Drafting Association Rules; 4th Ed; GAP Report #7, 2002.

Choosing a Management Company; 4th Ed; GAP Report #8, 1998.

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Bid Specifications and Contract Preparation; 3rd Ed; GAP Report #9, 1997.

Collecting Assessments - An Operational Guide; 4th Ed; GAP Report #10, 1996

Grounds Maintenance for the Community Association; 3rd Ed; GAP Report #11, 1997.

Selecting the Landscape Maintenance Contractor; 4th Ed; GAP Report #12, 1996.

How to Select and Use Association Legal Counsel; GAP Report #13, 1996.

Disaster Management for Community Associations; 3rd Ed; GAP Report #14, 1999.

Communications for Community Associations; 4th Ed; GAP Report #15, 2001.

Revitalizing Apathetic Communities; 3rd Ed; GAP Report #16, 1996.

Enhancing Outdoor Spaces for Community Associations; GAP Report #17, 1998.

The Role of the Association Secretary; 3rd Ed; GAP Report #18, 1999

Selecting an On-Site Manager; 2nd Ed; GAP Report #19, 1996.

Conflicts of Interest; 2nd Ed; GAP Report #20, 1996.

Guide to Annual Meetings and Elections; 3rd Ed; GAP Report #21, 1999.

The Role of the Association Treasurer; 3rd Ed; GAP Report #22, 1998.

The Role of the Association President; 3rd Ed; GAP Report #23, 1999.

Reserves; 4th Ed; GAP Report #24, 2000.

Community Association Risk Management; 2nd Ed; GAP Report #25, 2002.

Resolution and Consensus Building; GAP Report #26, 1997.

Successful Leasing in a Community Association; GAP Report #27, 1999.

Pet policies: How to Draft and Enforce Rules; GAP Report #28, 2001.

Community Associations Institute Research Foundation.
Community Associations Leadership: A Guide for Volunteers. CAI Research Foundation, Alexandria, VA: 1997.

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Fairfax County, Virginia.
Fairfax County Public Facilities Manual, Vol. 1; Adopted by the Fairfax County Board of Supervisors. 2001.

Gross, Malvern J. and William Warshauer.
Financial and Accounting Guide for Non-Profit Organizations. 6th edition; John Wiley & Sons, Inc. 2000; & 2001 supplement

Institute of Real Estate Management.
Expense Analysis: Condominiums, Cooperatives, and Planned Unit Developments. Institute of Real Estate Management, Chicago, 2000.

National Spa and Pool Institute.
Basic Pool & Spa Technology Textbook; National Spa and Pool Institute. Washington, DC: 2001 (available online at www.nspi.org .Cost $240)

National Swimming Pool Foundation.
Pool & Spa Operators Handbook; National Swimming Pool Foundation, Austin, TX; (available online at www.nspf.com)

Northern Virginia Planning District Commission,
Environmental Services Division
Maintaining BMPs - A Guidebook for Private Owners and Operators in Northern Virginia, published in cooperation with the U.S. Environmental Protection Agency and the Virginia Department of Conservation and Recreation, Feb. 2000; (Available online at: www.novaregion.org/enviser.html)

Northern Virginia Soil and Water Conservation District.
You and Your Land: A Homeowners Guide to the Potomac River Watershed Fairfax, Virginia: 2002; (available online at www.fairfaxcounty.gov/nvswcd).

Robert, Henry M. III, Trustee for the Robert's Rules Association,
Robert's Rules of Order Newly Revised, 10th Edition, Perseus Publishing, Inc.; 2000

U.S. Consumer Product Safety Commission.
A Handbook of Public Playground Safety; publication #325, Government Printing Office Washington, DC: 2000; (available online at www.cpsc.gov).

Department of Transportation, Research and Special Programs Administration.
Guidance Manual for Operators of Small Gas Systems; Government Printing Office; Washington, DC: 2002; (online at www.tsi.dot.gov/divisions/pipeline).

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B. Articles and Brochures:

Department of Environmental Management, Division of Inspection Services.
When is a Permit Required? (no date)

Fairfax County Department of Tax Administration
Questions and Answers About the Business, Professional and Occupational Licensing Tax in Fairfax County, Virginia. (no date)

Fessler, Donald R.
Simplifying Parliamentary Procedure, Blacksburg, Virginia: Virginia Polytechnic Institute and State University, 1976.

Virginia Polytechnic Institute and State University Extension Division.
Contracts and the Consumer. Blacksburg, VA: VPI, 1977.

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CODE OF VIRGINIA
and
FAIRFAX COUNTY ORDINANCES

The Virginia statutes and County ordinances listed below supplement the text of the Fairfax County Community Association Manual and are pertinent to community association interests. There may be other laws, ordinances and legal provisions and requirements not listed here that are pertinent to community association governance and interests.

Every statutory section in the Code of Virginia and the Code of Fairfax County is subject to annual amendment through the respective legislative and governmental process. Including the text of these statutes and ordinances in this manual would require annual review, updating, and reprinting to continually provide the most current version. Because updated versions of these statutes and ordinances are available online, the following hyper-links and directions are provided in lieu of the text to assist the reader. However, these references are provided for information assistance only, and should not be used or construed as a substitute for legal, financial, managerial, or other professional advice, counsel, services, or course of action in the self-governance of any community association. The Consumer Protection Division at 703-222-8435 can provide printed copies of these laws to persons who do not have access to the Internet.

Code of Virginia

Virginia Property Owners Association Act: (Title 55, Chapter 26)

http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC55000000026

Virginia Condominium Act: (Title 55, Chapter 4.2)

http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5500000000400002

Virginia Nonstock Corporation Act: (Title 13.1, Chapter 10)

http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1301000001

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(The following selected sections pertain to condominium and homeowners associations that are incorporated (see pg. 18-21 of the manual)).

Section #	Section Title
13.1-814.1	Special provisions for community associations...
-823	Bylaws...
-826	General powers...
-837	Members...
-828	Annual Meeting...
-839	Special Meeting...
-841	Action without meeting...
-842	Notice of Meetings...
-843	Waiver of notice of Meetings...
-846	Voting entitlement of members...
-847	Proxies...
-848	Corporation's acceptance of votes...
-849	Quorum and voting requirements for…
-852	Voting for directors; cumulative voting...
-853	Requirements for and duties of board…
-854	Qualification of directors...
-855	Number and election of directors...
-857	Terms of directors generally...
-859	Resignation of directors...
-860	Removal of directors...
-862	Vacancy on board of directors...
-863	Compensation of directors...
-864	Meetings of board of directors...
-865	Action without meetings of board of directors...
-866	Notices of directors' meetings...
-867	Waiver of notice by director...
-868	Quorum & voting by directors...
-869	Committees...
-870	General standards of conduct for directors...
-870.1	Limitation on liability of officers; additional exception...
-870.2	Limitation on liability of officers; additional exception...
-871	Director conflicts of interest...
-872	Required officers...
-873	Duties of officers...
-874	Resignation and removal of officers...
-875	Definitions
-876	Authority to indemnify...
-877	Mandatory indemnification...
-881	Indemnification of officers, employees and agents...
-884	Authority to amend articles of incorporation...
-886	Amendment of articles of incorporation...
-892	Amendment of bylaws...
-893	Bylaw provisions...
-914	Automatic termination...
-932	Corporate records...
-933	Inspection of records by members...
-934	Scope of inspection right...
-935	Court-ordered inspection...
-936	Annual report...

Notes:
1) For a Table of Contents for each Act, print the page displayed on your browser screen.
2) For a copy of just one section of the law, click on the section number (link) for that section, then print your browser screen.
3) For a print copy of selected sections or the whole Act, click on the blue "create REPORT" (link) following the Chapter title, then type the selected section numbers (or just 1 to 9999 for the whole Act) in the appropriate boxes. You can either print directly from your browser screen or provide a valid e-mail address to receive the full report (it typically takes less than 5 minutes to receive the full report to your e-mail address).

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Fairfax County Ordinances

The following ordinances in the Code of Fairfax County are available online through the County homepage at www.fairfaxcounty.gov. Select the "Government" button in the upper right corner of the homepage; then select County Code in the column of links below; then select the Where Am I? link in the left-hand (blue) column; select the table of contents file icon; select the file icon (again) to display the full table of contents and then select the appropriate chapters as follows:

Peddlers, Solicitors and Canvassers - Chapter 31

Animals and Fowl Ordinance - Chapter 41, "Leash" Law – Section 41-2-4; "Pooper-Scooper" Law – Section 41-2-6

Swimming Pool Ordinance - Chapter 69

Motor Vehicles and Traffic - Chapter 82; Enforcement by County officers – Section 82-1-3; Removal (towing) of vehicles...– Section 82-5-32

Noise - Chapter 108, Nuisance Noise – Article 5

Zoning Ordinance–(Chapter112); The Fairfax County Zoning ordinance is separately available online at http://fairfaxcounty.gov/dpz/zoningordinance/; scroll to the last link at the bottom of the page to select the following:

- Constitution of the ordinance – Article 1, Part 1

-Purpose and intent - Article 1, Part 2

-Conflicting ordinances - Article 1, Part 4

-Common open space - Article 1, Part 7

-Interpretation of District regulations – open space - Article 2, Part 3

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