

# **FAIRFAX COUNTY**

## **Community Association Guide**



<b>PREFACE .....</b>	<b>1</b>
<b>CHAPTER 1 – LAWS, GOVERNING DOCUMENTS, AND REGULATORY AUTHORITIES .....</b>	<b>2</b>
COMMON INTEREST COMMUNITIES.....	2
CREATION AND PRESERVATION OF COMMON OPEN SPACES .....	2
FORMATION OF ASSOCIATIONS BY DEVELOPER OR DECLARANT .....	2
ASSOCIATION INCORPORATION STATUS .....	4
GOVERNING LAWS AND DOCUMENTS - PROPERTY OWNERS’ ASSOCIATIONS.....	5
GOVERNING LAWS AND DOCUMENTS - CONDOMINIUM ASSOCIATIONS .....	8
VIRGINIA STATE REGULATORY AUTHORITIES .....	15
<b>CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY .....</b>	<b>17</b>
TRANSITION FROM DEVELOPER OR DECLARANT CONTROL.....	17
BOARD OF DIRECTORS.....	20
BOARD OF DIRECTOR MEETINGS .....	23
GENERAL MEMBERSHIP MEETINGS.....	26
<b>CHAPTER 3 – ASSOCIATION MANAGEMENT .....</b>	<b>33</b>
OPERATIONS MANAGEMENT .....	33
MAINTENANCE MANAGEMENT .....	37
RISK MANAGEMENT .....	38
PEOPLE MANAGEMENT .....	39
<b>CHAPTER 4 – ASSOCIATION OPERATIONS AND FINANCES.....</b>	<b>49</b>
ANNUAL BUDGET .....	49
OPERATING EXPENSES.....	53
ADMINISTRATIVE EXPENSES.....	67
FINANCIAL PROCEDURES .....	70
<b>APPENDIX – COMMON INTEREST COMMUNITY RESOURCES.....</b>	<b>75</b>

## PREFACE

The Fairfax County Community Association Guide provides information and guidance for living in and managing property owners' associations and condominium associations. For the purpose of this document, homeowners' associations will be referred to as property owners' associations, as referenced 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 role and responsibility 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).

The information provided in this document is for informational purposes only, and should not be used or relied upon in place of the actual text of the relevant legislation. In addition, property owners' and condominium association members should consult with legal counsel regarding specific legal rights and interests, and should not rely solely on this guide to evaluate those specific legal rights and interests.

Please contact the Fairfax County Department of Cable and Consumer Services, Consumer Affairs Branch, at 703-222-8435, TTY 711, for additional information or assistance.

## CHAPTER 1 – LAWS, GOVERNING DOCUMENTS, AND REGULATORY AUTHORITIES

### Common Interest Communities

“Common Interest Communities” is a term to collectively describe housing developments comprised of individually owned units that have shared facilities and common areas, such as property owners’ associations and condominium associations. In both types of ownership, by virtue of individual Association governing documents, 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 or elements. These differences between property owners’ associations and condominium associations are substantial enough to require separate statutes in the Code of Virginia.

In Virginia, at the state level, there are laws and regulatory authorities that govern mandatory common interest community associations. At the County level, there may be laws that require a Developer to create and maintain common open spaces. At the Association level, there are governing documents that govern the rights and responsibilities of the Association Board and owners. These documents are referred to as the Declaration of Covenants, Conditions and Restrictions; the Master Deed; the Articles of Incorporation; and the Bylaws.

### Creation and Preservation of Common Open Spaces

[The Fairfax County Zoning Ordinance – Common Open Space and Common Improvement](#) 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. Developers of subdivisions are required to establish a nonprofit property owners’ association and prepare the necessary documents including the Declaration of Covenants, Conditions, and Restrictions that apply to each property and the subdivision. These documents obligate the Association to be responsible for the operation, perpetuation, and maintenance of all common property, including recreation facilities, private roads, parking areas, and private stormwater management facilities. Private attorneys representing the Developer normally prepare these documents which vary in content and style but must contain certain terms and conditions to be in compliance with the Zoning Ordinance. The Developer works directly with [Fairfax County Land Development Services](#) to submit plans for new common interest communities. The [Office of the County Attorney](#) reviews the plans for compliance with the County Zoning Ordinance and approves form prior to recordation in the [Fairfax County Land Records](#).

### Formation of Associations by Developer or Declarant

#### Property Owners’ Associations

The property owners’ association is legally established and defined when the Declaration of Covenants, Conditions, and Restrictions; an approved subdivision site plan; the Deed of Dedication; and if required, the Bylaws are recorded in the [Fairfax County Land Records](#). 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.

Recordation of these documents legally defines and establishes the entity of the Association and the mandate for Association membership. At this moment of the Association's inception, the Developer or Declarant is the only member and possesses full voting control of the Association until the first property is sold. Thereafter, the owner membership grows with the purchase of each lot or unit. Usually, the governing documents establish different classes of membership such that the Developer has two or three votes per unsold lot or unit, whereas, the new owners have one or two votes per lot. This assures that the Developer maintains voting control of the Association until sales reach approximately 70-75 percent, or the percentage specified in the governing documents, and the new owners are sufficient in number and knowledge to assume control of the Association and its operations. Eventually, all properties or units in the Association, together with the voting rights, are sold and the control and operation of the Association transition to the owners. The Developer may still be available on site for several months, or longer as the construction is completed and reviewed by County officials, prior to the [Fairfax County Land Development Services Bond Release](#).

### Condominium Associations

The condominium association is legally established and defined by virtue of the [Condominium Act](#) (the Act) and the governing documents. Sometimes the condominium association is referred to as the Unit Owners' Association or Council of Co-Owners. Association membership is mandatory and automatic upon purchase of a unit. The Act specifically requires the Developer 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. 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.

### *Condominiums*

Condominium projects or condominiums are multiple-unit structures in which each unit is privately owned, but some parts of the structure (e.g., roof, lobby, hallways, and utility systems) or the grounds (e.g., roads and parking, pool, landscaping, and street lights) are owned and shared by all unit owners. Condominiums may be multi-storied, high-rise buildings, town houses, garden apartments, or other structural forms; and may be limited to residential or

commercial use only. Occasionally condominiums may include a mix of residential units and commercial uses. The Developer may increase or decrease the overall condominium project 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 establish different types of condominiums to meet the long-range development plans prior to sale of the first unit. A review of the governing documents will identify whether the condominium is a contractible, conversion, expandable, or leasehold condominium.

It is important for prospective purchasers, owners, and Association Directors to understand the Developer may have retained rights with respect to some improvements or amenities of the condominium. Often the Developer will retain rights to add or withdraw property to or from the condominium project. Purchasers should also know what control of the condominium Association the Developer plans to retain and for how long. Similarly, purchasers should understand what insurance provisions apply, any restrictions on the sale or lease of the unit, 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 Common Interest Community 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 unit is offered for sale. The disclosure documents, and 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. It is important that every prospective unit owner knows and understands all provisions, conditions, and rights described and defined in these documents.

### **Association Incorporation Status**

Property owners’ or condominium associations may be incorporated. Incorporation is a common business practice that assures an entity of the powers, duties, privileges, and obligations of its corporate status. In Virginia, a nonprofit property entity may be incorporated under provisions of the [Virginia Nonstock Corporation Act](#) which is regulated and enforced by the [Virginia State Corporation Commission](#) (SCC). The decision may be made, first by the Developer, and then by the owners or Directors after transition of Association control. Associations may seek legal consultation regarding the benefits of incorporating or re-establishing such incorporation, if it has lapsed.

Virginia's Nonstock Corporation 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. 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 may apply. Whenever a change in the Articles of Incorporation is considered, the statute should be reviewed to make certain the change is permissible. Nonstock corporations are required to file annual reports and notify the State Corporation Commission of any amendments to the Articles of Incorporation.

An Association's registered agent is the official public contact for the corporation and ensures that official correspondence will reach the Association. Many Associations employ an attorney to be its registered agent and use that business address as the registered corporate office address. Any changes in the registered agent should be promptly reported to the State Corporation Commission.

### Governing Laws and Documents - Property Owners' Associations

Virginia State Law

#### *Virginia Property Owners' Association Act*

The Virginia [Property Owners' Association Act](#) enables, provides, and clarifies the authority granted to a property owners' Association and its Board of Directors, and establishes many of the Association's rights and responsibilities, some of which are highlighted below:

- Conducts open meetings, keeps detailed books and records, and makes them available to members;
- Enforces the Declaration of Covenants, Conditions, and Restrictions through due process procedure and the levy of financial penalties, if expressly authorized, against the property for violations;
- Levies special assessments when necessary or in appropriate circumstances; and
- Creates liens and other enforcement remedies as clarified.

#### Consumer Disclosures

Association Disclosure Packet – Because of the special nature of property ownership and authority found in property owners' associations, prospective purchasers need to know the various rights, responsibilities, and authorities of the Association and its members before purchasing a property in a particular common interest community association. Purchasers 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 packet to the purchaser that discloses that the lot is located in a property owners' association subject to all provisions and requirements of the Act. The Association disclosure packet must contain the items as referenced in [§ 55.1-1809 Contents of association disclosure packet; delivery of packet.](#)

The Association is required to include a Virginia Property Owners' Association Disclosure Packet Notice which informs the buyer of automatic and mandatory membership in the property owners' association upon accepting title to a lot within a common interest community. The notice highlights the rights and responsibilities of membership and the responsibility for and obligation to pay periodic assessments, and if necessary, special assessments to ensure the Association's financial requirements are met. It further discloses the potential actions, as outlined in the governing documents and the Property Owners' Association Act, the Association Board can take if an owner fails to comply with the governing documents or fails to pay assessments and or mandatory fees. The Property Owners' Association Disclosure Packet Notice and other Disclosure Forms are available on the Virginia [Common Interest Community Board](#) Web site.

Collecting the materials involves time, effort, and resources and the law allows the preparer to assess reasonable charges, but sets a maximum allowable amount for such fees. Fees for preparation of the disclosure packet are outlined in the Virginia Property Owners' Association Act. Nonprofessionally-managed or self-managed Associations may refer to [§ 55.1-1811 Fees for disclosure packet; associations not professionally managed.](#) Professionally-managed Associations may refer to [§ 55.1-1810 Fees for disclosure packet; professionally managed associations.](#)

Once a disclosure packet has been delivered to the purchaser, an Association is bound by the statements in the packet as it relates to the assessment account and the status of the lot with respect to any violation of the Declaration, Bylaws, rules and regulations, architectural guidelines and Articles of Incorporation. If an Association fails to deliver the disclosure packet, it waives the right to any claims for delinquent assessments and violation of the Declaration, Bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. An Association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall

nevertheless be obligated to abide by the Declaration, Bylaws, rules and regulations, and architectural guidelines of the Association as to all matters arising after the date of the settlement of the sale. The purchaser is responsible for examining the information contained in and provided with the Association disclosure packet.

#### Eminent Domain

The Virginia Property Owners' Association Act [§ 55.1-1836 Condemnation of common area; procedure](#) empowers the Association to negotiate with local governments for monetary awards when the Association's common area is taken or damaged by eminent domain. This provision also stops individual members from contesting the action of the Association in such matters.

#### Property Owners' Association Governing Documents

##### *Declaration of Covenants, Conditions, and Restrictions*

The Declaration of Covenants, Conditions, and Restrictions provides the legal basis for preserving the Developer's approved plan for the residential and common properties in a development. It establishes the rights and obligations of the owners and the Association.

Consultation with an attorney is recommended before making any amendments to the Declaration or Bylaws to ensure consistency with the higher standing state law and zoning requirements. 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 to a recorded document must also be recorded in the County Land Records in order to supercede the former record and become legally enforceable.

##### *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 not required. Typically, Association Bylaws include:

- The number of Directors, term lengths, powers and duties, and methods of election and recall;
- Rules for the conduct of meetings to include agenda, order of business, and quorum and voting requirements;

- Requirements for annual membership meeting, special meetings, and notices required prior to these meetings;
- Committees that may be established to advise and assist in the management of the Association and the appointment to such committees;
- Enforcement of the Declaration, Bylaws, rules and regulations, and methods for amendment;
- Establishment of financial procedures and the Association budget; maintenance of the books and records; and assessment levels and collections;
- Maintenance of Association properties;
- Bonding and insurance requirements; and
- Employment of Association staff and description of duties.

## Governing Laws and Documents - Condominium Associations

Virginia State Law

### *Condominium Act*

The [Condominium Act](#) imposes specific limitations, restrictions, responsibilities, and obligations that may not be included in the recorded documents. Among the more commonly referenced provisions of the Condominium Act are the following:

- A general meeting of all unit owners shall be held at least once per year to elect Directors and conduct other Association business;
- Board meetings shall be open to unit owners and minutes shall be kept and available to unit owners. Closed executive sessions of the Board shall be permitted only in limited circumstances;
- Defines when a quorum shall be deemed met at the beginning of a meeting;
- When proxy votes shall be 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 and that all proxies shall be automatically invalid upon adjournment of the first meeting after the date of the proxy;

- Accurate, detailed books and record of the receipts and expenditures relating to the operation and administration of condominium must be maintained and available to owners;
- 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; and
- Upon receipt of a written request, specifies the time the unit owners' association has to 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.

#### Consumer Disclosures

Certificate of Resale – Because of the special nature of property ownership and authority found in condominium associations, prospective purchasers need to know the various rights, responsibilities, and authorities of the Association and its members before purchasing a property in a common interest community. Purchasers need to be informed of 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 certificate of resale packet must contain the items referenced in [§ 55.1-1991](#) [Contents of resale certificate; delivery.](#)

The unit owners' association is required to include a Condominium Unit Owners' Association Resale Certificate Notice which informs the buyer of automatic and mandatory membership in the condominium unit owners' Association upon accepting title to a unit within a common interest community. The notice highlights the rights and responsibilities of membership and the responsibility for and obligation to pay periodic assessments, and if necessary, special assessments to ensure the Association's financial requirements are met. It further discloses the potential actions, as outlined in the governing documents and the Condominium Act, the unit owners' Association Board can take if an owner fails to comply with the governing documents or fails to pay assessments or mandatory fees. The Condominium Unit Owners' Association Resale Certificate Notice and other Disclosure forms are

available on the Virginia [Common Interest Community Board](#) Web site.

Fees for preparation of the resale certificates are outlined in the Condominium Act in [§ 55.1-1992 Fees for resale certificate](#).

#### **Eminent Domain**

The Condominium Act [§ 55.1-1906 Eminent domain](#) speaks to the procedures to follow and the Boards authority when any portion of the common area is taken or damaged under the power of eminent domain.

#### Condominium Association Governing Documents

##### ***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 in the County Land Records by the Developer prior to the sale of any unit. These instruments must comply with and are subservient to the Condominium Act, the Virginia Nonstock Corporation Act, and other applicable laws. Any amendment(s) to the recorded 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. The Declaration establishes the type of condominium and may reserve certain rights for the Developer; e.g. 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. The [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”), address, 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 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, 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 Developer’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 provide for effective governance and administration. The [Condominium Act](#) requires Bylaws to be recorded in the County Land Records. In cases of conflict, the Bylaws have higher standing than adopted rules and regulations or policy resolutions of the Association. The Bylaws are the Association's operational and procedural manual and typically provide guidance for:

- The number of Directors and officers, election, and replacement procedures;
- Board of Director authority, duties, and obligations in conducting the business of the Association;
- Meeting, quorum, voting, and petition requirements;
- Requirements for employing staff, contracting and delegating duties; and
- Other procedures and operational requirements.

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 "supermajority" of unit owners representing not less than 2/3 of Association votes must ratify the amendment document(s). While the Directors have the authority to adopt rules and regulations by resolution, Directors do not have the authority to amend the Declaration or Bylaws by 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, or 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 County Land Records before it becomes effective and enforceable. Directors 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. 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;

- 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. 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 successors in title with respect to the common elements, 1) to grant easements through the common elements and to accept easements benefiting the condominium, and 2) to assert, litigate, defend against, compromise, adjust, and settle any claims or actions related to the common elements; and
- 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.

#### *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, 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.”

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; roadways, trails, and 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; and swimming pool(s); and
- Devices or installations existing for common use such as elevators, garbage incinerators, compartments and installations of central services and utilities, all parts of water supplies, sanitary drain pipes, electric utilities, and gas distribution systems that serve more than one residential unit; and, 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.

The Condominium Act is clear regarding maintenance, repair, and replacement responsibilities. [§ 55.1-1955 Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee](#) states *“Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part of such unit,…”*

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.

## Virginia State Regulatory Authorities

The Virginia Common Interest Community Board and Office of the Common Interest Community Ombudsman

The state regulatory authorities that govern common interest communities are the Virginia [Common Interest Community Board](#) and the [Office of the Common Interest Community Ombudsman](#). The Common Interest Community Board (CIC Board) consists of 11 citizens appointed by the governor, representative of common interest community professionals and members. The CIC Board is charged with the development and regulation of educational requirements, licensing and certification of common interest community managers and employees, the complaint process for the Office of the Common Interest Community Ombudsman, the administration of the Common Interest Community Management Information Fund, and the enforcement of regulations established under its authority.

The CIC Board is responsible for administering Virginia's property registration laws: the [Condominium Act](#), the [Virginia Real Estate Time-Share Act](#), the [Virginia Real Estate Cooperative Act](#), and the [Property Owners' Association Act](#). These statutes generally require registration and certain disclosures by land Developers. The CIC Board is authorized to promulgate regulations to fulfill the requirements of these acts. The CIC Board regulates the sale of new condominiums and time-shares. The Condominium Act and the Real Estate Time-Share Act cover transactions occurring within the Commonwealth, even if the property involved is located outside the Commonwealth. Common interest communities are required to register and file annual reports with the CIC Board. Changes in Board membership and common interest community management are required to be reported to the CIC Board, as well.

The Office of the Common Interest Community Ombudsman offers assistance and information to Association members regarding available rights and processes. The [Common Interest Community Ombudsman Regulations](#) require Associations set rules for receiving and considering complaints from members and other citizens related to violations of applicable state laws and regulations. Specifically, the regulations 1) require Associations to establish written complaint procedures; 2) require the maintenance of Association complaint records; 3) set time frames in which Associations must complete certain actions; 4) indicate the consequences for failure of an Association to establish and implement a complaint procedure; and 5) establish procedures and forms for filing a notice of final adverse decision.

The Office of the Common Interest Community Ombudsman reviews Notices of Final Adverse Decision resulting from the submission of a complaint through an Association's complaint procedure. The purpose of this review is to determine if the final adverse decision received by the complainant, from the Association, may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the CIC Board.

[Ombudsman Determinations](#) are made available online to serve as an information resource on common interest community disputes. The guidance provided in the published determinations may be helpful for Association owners, members of Association Boards of Directors, and those who may be dealing with similar issues.

Visit the [Office of the Common Interest Community Ombudsman](#) Web site for forms, determinations, and news and publications.

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

This chapter discusses the administration of a common interest community 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 or Declarant Control

A condominium or property owners' association is created when the Declaration and other required documents are recorded in the County Land Records. At inception, the Developer owns 100 percent of the (proposed) development and all votes allocated to the properties or units by the Declaration. The Developer is the entire Association; appointing the initial Board of Directors, conducting Association meetings, and keeping records of decisions and financial matters of the Association separate from business concerns. This total control of the Association is gradually relinquished as residential units or properties (and the allocated votes) are sold to private owners. During this time, the Developer usually appoints new owners to replace the initial Board of Directors while maintaining rights as 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 and units (and votes) has been concluded.

A property owners' first involvement in the administration of the Association usually takes place during the transition period, when voting control of the Association transfers to the majority owners who elect the Board of 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 or units, or at a predetermined date when the Developer anticipates substantial completion of the development, whichever comes first. For condominiums, the transition period takes 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 are encouraged to become familiar with the operation and administration of the Association. 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.

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

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 owner concerns about unfinished construction, unacceptable conditions, cost responsibilities, safety hazards, or concern that the Developer's bond will be released prior to corrective action. It is important for an Association to maintain a list of defects, deficiencies, and unacceptable conditions to share with the County inspector. The inspector has the authority to enforce correction of required elements prior to the bond release.

New owners are encouraged to communicate with one another and to take initiative to prepare for the upcoming responsibility by formulating a list of questions and concerns about the Association's role and authority and to request an owners' meeting with the Developer and County officials. It is important for owners to maintain involvement in the Association and to become knowledgeable about operations. If the Developer does not involve owners in operating the Association, owners can learn by reading the Association's governing documents and reviewing the books and records (an owner's right under the [Property Owners' Association Act](#) and the [Condominium Act](#)). In addition, owners may communicate with the Board of Directors or personnel to report violations of the architectural controls or other Covenants, and to request that they be corrected and enforced.

It is advisable for owners involved in the transition process to contact an attorney who is knowledgeable with common interest community 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 viability; examine the Covenants, Conditions, and Restrictions (CC&Rs); and advise owners on rights and responsibilities. An attorney can determine whether any other 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 and 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;
- 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;

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

- 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; and
- A list of owners in the development.

If the Developer fails to provide the above materials, documents, and records, contact the referenced departments and agencies below for the applicable documents:

Declaration, Covenants, and Bylaws – [Fairfax County Land Records](#)

Articles of Incorporation – [Virginia State Corporation Commission \(SCC\)](#)

Development Plans – [Fairfax County Land Development Services – Site Development](#)

Unit Owners in the Association – [Fairfax County Department of Tax Administration](#)

Association Contact Information – [Virginia Common Interest Community Board](#)

Developer’s Bond and County Inspections

Developers are required to post a bond with [Fairfax County Land Development Services](#) to assure the completion of the public improvements. Bonded facilities normally include (but are not limited to) streets, sidewalks, curbs and gutters, storm drainage, stormwater management ponds, sanitary sewers, utilities, and lighting. Common grounds and common elements such as parking lots, swimming pool, clubhouse, play courts, fields, tot lots, trails, etc. are also covered by the Developer’s bond. All bonded items are required to be constructed per approved plans and County standards. The bond does not cover 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](#) (USBC) and usually have warranties provided by the homebuilder and/or material and product manufacturers and suppliers.

The Developer is responsible for developing and maintaining the common areas and elements, as provided and bonded for in the approved site plan. These responsibilities may include 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., [Virginia Department of Transportation](#) (for public roads), or [Fairfax Department of Public Works and Environmental Services](#) (for stormwater maintenance). All cost and responsibility for the elements in the approved site plan 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 Limitation of Prosecutions](#), reporting a Fairfax County 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. Land Development Services is responsible for inspections, approvals, and enforcement of the Virginia USBC through the first year. Concerns regarding bonded public facilities should be reported to the [Fairfax Land Development Services - Site Development](#) for investigation. The status of a Developer’s bond for public improvements is available from the [Bonds and Agreements Branch](#).

[Best Practices Report #7 Transition](#), Community Associations Institute Research Foundation, 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 property owners’ and condominium associations to be governed by an “executive organ,” more often called the Board of Directors (or Trustees). The Board manages and conducts the business of the Association; maintains and repairs the common property; and promotes compliance with the Covenants, Conditions, and Restrictions as well as the adopted rules and regulations. In most Associations, the number of Directors is stipulated in the Bylaws, but generally is large enough to avoid being overburdened with work, but small enough to be efficient. Directors 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 contributions from new members.

#### Duty of Compliance with Hierarchy of Documents

The Board can delegate duties to the property manager, committees, and 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 the Association and apply due consideration in all decisions and actions. 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 (Condominium Act, Property Owners Act, Virginia Nonstock Corporation Act), regulations, and court decisions;
- County/local ordinances, regulations, and court decisions;

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

- Declaration of Covenants, Conditions, and Restrictions (CC&Rs) and Master Deed;
- Articles of Incorporation;
- Bylaws; and
- Rules and Regulations and 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. Conversely, the adopted rules and regulations of the Board have the least legal standing and, therefore, have opportunity for flexibility and discretion. 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.

### 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 decisions work to the benefit and protection of property values in general and without consideration of personal interest or gain. Members of the Board are protected by the business judgment rule which is the ability to demonstrate reasonable investigation, consideration, thoroughness, and good business judgment in reaching decisions. Board members must be familiar with the documents of the Association; stay informed about Association issues; regularly attend meetings; and request that perspectives, opinions, and decisions be recorded in the meeting minutes, if and when in disagreement with a Board’s action.

It is helpful to hold an orientation session for newly elected Board members and provide each Director with specific information about the Association. A Director manual might include copies of Association documents; including Bylaws, rules and regulations, budget materials, and minutes of previous Board meetings.

### Officers of the Board

Each Association's Bylaws specify that the Board of Directors must elect officers from among its members at the first meeting following the general election by the membership. This is the only occasion in either property owners' 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 transacted. The president presides over meetings of the Board and general membership meetings, signs all official documents, 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 by discretion. The president should be a leader, have the ability to delegate authority, and have a working knowledge of parliamentary procedure. It is important that the president keeps an open line of communication to residents and is aware of problems and concerns. The president is perceived as the official representative of the Association and must clarify when speaking for the Association and when speaking as an individual member.

**Vice President** – The vice president 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 delegate that responsibility. The vice president is often assigned special duties 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 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 of Director Meetings

The purpose of Board meetings is to conduct the business of the Association. This ranges widely from contracting; making purchase 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 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.

### Board Meeting Packet and Agenda

A meeting packet 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 packet 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 background documentation when necessary. A typical Board meeting agenda may read as follows:

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

### Requirement for Open Meetings

While the Directors have the authority and responsibility to conduct business and make important decisions, all members of the Association have the right to attend meetings and to know what is happening and proposed in the community. The state laws governing property owners' and condominium associations require that all Board of Directors meetings, workshops, committee meetings, and any other official assemblage of the Association 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 act efficiently on the matters in the upcoming meeting, but these too, are open meetings.

The laws 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, Web site, or e-mail). Further, any member may provide a written request to receive such 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 members.

### Member Participation in Board of Director Meetings

Further still, the Board must designate a period of time during each meeting to allow any member present to voice concerns or comments on any matter relating to the Association. The Board can adopt reasonable rules governing use of this time. Members' comments are often matters for the record, or future attention and do not have to be thoroughly discussed and decided; just heard and acknowledged. A Board member may be designated to acknowledge and reflect 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. Board meetings can create interest and involvement in the community by helping residents feel informed and a part of the decision-making process. It is constructive for the Board to listen, acknowledge, and follow up on issues presented by Association members, and to keep the membership informed of the discussions, progress, and actions concerning these issues.

### Executive Sessions and Privileged Information

Closed executive sessions of the Board are to discuss privileged, legal, and private matters but only under limited and specific subjects and circumstances. Closed executive sessions are not to be used to circumvent the open meeting requirements, avoid the attending members, or evade contentious issues. The sole purpose of a closed executive session is to protect the privacy of these specific subjects:

- 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.

A closed executive session is only one part of an open Board or membership meeting. During the open meeting, a motion identifying the specific subjects and reasons for a

closed executive session must be made, seconded, approved, and recorded in the minutes. It is a violation of state law to convene and conduct a closed executive session prior to the start of any meeting. It is also a violation to “adjourn the meeting to go into closed executive session” because following the closed executive session, the Directors must reconvene in the open meeting. Any agreement or decision resulting from the closed discussions must be voiced and substantially identified and voted in the reconvened open meeting for purpose of recordation in the minutes. While agreements can be decided, no votes are permitted in such closed executive session because the laws prohibit secret voting on Board matters. The Board could risk a lawsuit by enforcing a closed executive session decision that was not substantially identified and recorded in a reconvened open meeting and not publicized to the Association members.

### Board Resolutions

The majority of decisions affecting an Association and 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 Directors in making consistent and supportable decisions. Some policy resolutions will affect the business operation of the Association; others will affect the rights and obligations of members. The Board must ensure that members are informed that a policy change is being considered and are given an opportunity to present comments 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. Members of the Board of Directors are encouraged to practice care in adopting policy resolutions that affect the members’ rights and obligations. Guidelines include:

- 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 Web site if one is established), or copies mailed to members;
- A hearing should be scheduled to provide for member input and discussion of proposed policy resolutions;
- 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; and

- 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.

### Meeting Minutes

Applicable Virginia statutes and most Associations’ Bylaws require that factual and accurate minutes be kept of all Board of Directors meetings, annual membership meetings, committee meetings, and special meetings of the members. 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. Each topic should include a title and sufficient information to establish its background, action to be taken, and the reasons for the action. Only important points in the discussion should be recorded along with any decision, 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.

The purpose of a meeting is to conduct the business of the Association and the minutes should record what was decided, but not said. 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 the most recent edition of “Minutes and Reports of Officers” of Robert’s Rules of Order Newly Revised. 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.

### General Membership Meetings

State laws require all property owners’ and condominium 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 for the election of Directors by its members. If the Directors’ terms are for multiple years and are staggered, only one or a few positions may be elected each year.

Lack of information and promotion may result in a poor or even non-quorum turnout that causes particular difficulties for the Board and management. All Board members should

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

contribute in generating membership participation in the annual election meeting. To this end, many Associations publish bio-sketches and written statements and goals of the candidates in the newsletter or Web site, 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.

### Membership Meeting Notice and Agenda

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 give different authorities or voting rights upon the Directors or the members than is normal. Many Associations require an annual audit report and annual budget to be presented to the membership for explanation, comment, discussion, and explanation prior to approval voting. Some Associations require budget approval by the full membership, others by the Directors only. Nevertheless, these are 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 procedure for notification, 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 and election meeting is set by the governing documents. For others, the president, the Board of Directors, or management determines the agenda or order of business. A typical agenda includes:

- |  |                                      |
|--|--------------------------------------|
| 1) Call to order                       | 7) Election of officers              |
| 2) Approval of minutes of last meeting | 8) Approval of assessment and budget |
| 3) Acceptance of treasurer’s report    | 9) Old Business                      |
| 4) Report of Board of Directors        | 10) New Business                     |
| 5) Reports of all committees           | 11) Adjournment                      |
| 6) Report of management agent          |                                      |

### Points for Effective Meetings

The president or presiding officer must follow the requirements of the law, adhere to the agenda, maintain order, and allow for all viewpoints. 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;
- Preparation of election ballots, financial statements, and committee and general reports to be distributed at the meeting;
- Adherence to the agenda and time limits for the discussion of each topic;

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

- Presentation of each motion with a historical background and summary of the issue; and
- Recognition of each person wishing to speak, keeping the discussion relevant to the issue, and maintaining 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, often being a higher percentage of members for small Associations to assure a representative number of voters is present. A 10 percent requirement for an Association of 250 members is more adequate representation of a community than a 10 percent 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 the 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.

If a quorum has not been met for three consecutive years, the [Condominium Act](#) provides for the condominium Association or any unit owner entitled to vote to petition the Fairfax County Circuit Court to order an annual meeting for the purpose of election of the members of the executive organ. The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

### Proxies

Association members are encouraged to vote in person, but if not possible, proxies should be used, if permitted by the Association's documents, to provide for a greater percentage of the allocated owner or member votes to be cast. A proxy is the signed permission of a valid owner or member that designates another person to cast a vote in place of the owner or member. To be valid, every proxy must designate to whom it is assigned, and must be signed and dated by the owner or 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 or Trustee elections. 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 completion, 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 or member; however, some documents are silent on who may be assigned by an owner or member to cast a vote by proxy. While it may not be a violation to choose a non-owner, the proxy instruction to the voting membership should include a reminder that non-owners have no vested interest and may not understand the impact of a particular issue. 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 a member of the Association) causes a conflict of interest, a breach of professional and ethical standards, and could invite a liability claim against the Directors and 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 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 issues, and when members wish to vote in secret. 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.

### Meeting Minutes

Applicable Virginia statutes and most Associations’ Bylaws require that factual and accurate minutes be kept of all Board of Directors meetings, annual membership meetings, committee meetings, and special meetings of the members. 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. Each topic should include a title and sufficient information to establish its background, action to be taken, and the reasons for the action. Only important points in the discussion should be recorded along with any decision, 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.

The purpose of a meeting is to conduct the business of the Association and the minutes should record what was decided, but not said. 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 the most recent edition of "Minutes and Reports of Officers" of Robert's Rules of Order Newly Revised. 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. Most committees are advisory in nature, but under the provisions of the Virginia Nonstock Corporation Act, a Board may adopt a resolution delegating authority to a committee unless its own documents specifically prohibit such delegation. Committees also help foster broader member interest and participation in the Association and can help keep the Board aware of member concerns.

Committees assist the Board by researching issues and assuming responsibility for specific aspects of Association operation. 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 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

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

responsibility. 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, stating the purpose, authority, resources, and responsibilities. A timetable should be established for progress and final reports to be submitted. The following are examples of committees and a brief overview of the scope of responsibility:

### Architectural Review Committee

The architectural review committee (ARC) is normally responsible for assuring that any 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. An architectural guideline publication which lists 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.

Violations of architectural guidelines and procedures should be handled promptly, using an Association’s standard rule enforcement procedures. In cases where a violation of the Association’s architectural controls is also a violation of the Fairfax County zoning or building Code, the County may be able to assist the Association by enforcing the Fairfax County Code provision. For information concerning building Code violations, contact the [Fairfax County Department of Code Compliance](#).

### 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. 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 these procedural tasks under supervision of the Board of Directors.

## CHAPTER 2 – ASSOCIATION ADMINISTRATIVE AUTHORITY

### Budget or 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; making recommendations concerning assessments and collections procedures, budget procedures, tax preparation, insurance, audits, and contracts.

### Communications and Community Relations Committee

The communications committee provides for various forms of communication between the Association and the residents to educate and keep the community informed of the activities of the Board of Directors and facilitates communication regarding community concerns.

For more information about committees please refer to [An Introduction to Community Association Living](#), a publication by the Community Associations Institute.

## CHAPTER 3 – ASSOCIATION MANAGEMENT

Common interest community associations have specific and legally obligated responsibilities and duties, including 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 the level of accomplishment. This chapter describes types and styles of management used by Associations to fulfill the responsibilities; and discusses aspects of property management, risk management, and “people management.”

Management can be defined as the process by which the available material and human resources are most effectively used to achieve the goals of an organization. The purpose of property owners’ and condominium associations is to maintain the common areas and facilities of the development and to protect property 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 the resources effectively 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 maintenance and the upkeep of recreational facilities, this 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 the tasks will be completed. It is helpful to generate a list of individual tasks and delegate the responsibility 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 uses. It should be noted that the documents of some Associations, require that a professional management firm or professional manager be employed to manage the Association. Most Associations, however, are free to choose the type of management for the community.

### Operations Management

There are three basic management arrangements used by most property owners’ and condominium associations: self-management, hired management, and contracted management. The type of management used by an Association depends upon many factors, including physical characteristics of the community (number of units, type of housing, extent of recreational facilities, etc.), the desires of the residents and willingness to volunteer, and the financial position of the Association. A 125-unit townhouse complex, for instance, may use professional management if the majority of owners are absentee investors not involved in the day-to-day operation of the community. Self-management might be used if the owners have the desire and time to volunteer and are concerned about keeping the assessment as low as possible. Regardless of the type of management used, it is imperative that the Association

## CHAPTER 3 – ASSOCIATION MANAGEMENT

informs the residents of the exact responsibilities of its maintenance and management personnel and keeps members informed of any changes in staffing, procedures, or management's responsibilities.

### Self-Management

In a self-managed association, the Board establishes the policies and procedures to be followed in the operation of the association and supervises the responsible persons. Self-managed associations are typically small, have limited facilities, and provide limited services. The success of volunteer self-management depends on the residents and requires dedication, teamwork, and expertise in performing the tasks related to 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 can negate any savings. A volunteer self-management Association should consider the breadth and amount of Directors' and Officers' liability insurance.

Not all self-managed associations depend exclusively on volunteers. Some hire individual employees or contract with one or more firms to perform maintenance or administrative tasks 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. 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 withholdings; and the supervision of employees. Contracting involves the development of specifications, evaluation of bids, contract negotiations, and contractor's performance monitoring. The costs and benefits of employing staff should be evaluated to make certain an Association is receiving the best value.

### Hired Management

Some Associations employ individuals to manage the day-to-day operation of the Association. Usually, an Association large enough to need (and afford) a full-time manager will require other personnel to assist the manager with administrative 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 of Directors 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, etc.), 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 work well with the Board and residents. A disadvantage of hired management is when a manager leaves the Association's employment, the Board must take over until another manager is hired and trained.

### Contracted Management

Contracted management normally refers to the employment of a company that specializes in all aspects of professionally trained common interest community association management and operation. Many management firms also offer consulting services that can be contracted on an individual basis. 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 Association. 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 accessing its established management and financial systems on behalf of the Association. An Association which contracts for management could become too dependent upon the firm for information about 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, monitor delinquencies, deliver notifications to the Board of Directors; and send violation notices to residents;
- Maintain Association books and records and prepare financial statements

## CHAPTER 3 – ASSOCIATION MANAGEMENT

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 coverages and report insurance claims; and
- Make recommendations to the Board of Directors on Association matters.

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

- **Experience** – The firm should be familiar with the concept of property owners' or condominium Association management. Make sure the firm's personnel are knowledgeable about the Virginia [Property Owners Association Act](#) and the [Condominium Act](#);
- **Licensed** – The firm and employees should be properly licensed with the [Virginia Common Interest Community Board](#).
- **Reputation** – Ask for and check references about the firm's past performance with similar Associations. Investigate through professional Associations, the [Fairfax County Police Department](#), the [Virginia Common Interest Community Board](#), and the [Better Business Bureau](#), whether a company or officer thereof has ever been convicted of a crime and whether the company's insurance bond has ever been paid for dishonesty, an act of negligence, or other inappropriate or criminal actions. Investigate any consumer complaints filed against a firm with the [Fairfax County Consumer Affairs Branch](#) and the [Virginia Attorney General Consumer Protection Office](#), including how the complaint was resolved.
- **Financial Stability** – Check the firm's credit rating, insurance and bank references, and vendors and suppliers to learn how promptly the firm pays its bills.

- **Professional Affiliation** – Check to see if the firm belongs to one or more professional property management organizations such as the [Community Associations Institute](#) or the [Institute of Real Estate Management](#).
- **Services** – Determine whether the firm offers services the Association needs. If any services are subcontracted (grounds and pool maintenance, accounting, etc.), discuss the expected standard of maintenance.
- **Personnel** – Determine the number of persons to work in the Association, completed training, tenure with the firm, and firm bonding.
- **Procedures and Systems** – Ask the firm to describe the accounting system that will be used, the collection process for delinquent assessments, maintenance schedules, and purchasing and billing procedures. Determine compatibility with the Association’s policy and procedures.
- **Accessibility** – Inquire how the firm will handle after-hours emergencies.
- **Compensation** – Determine if the management fee is based on a package of services, extra charges, or separate charges for each service. Clarify if the fee includes attendance at Board of Director meetings and other after-hours obligations.

### Maintenance Management

Each common interest community has unique maintenance requirements. A community’s design, location, and size as well as the type and quality of the building materials, construction, and recreational facilities will effect the Association’s maintenance needs and costs. While most Associations have no control over these factors, a program to maintain the common areas and facilities in good and safe condition is needed. The degree of involvement in maintenance and maintenance planning by an Association’s Board of Directors and members will depend on the type of management. 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 and extends the useful life of the equipment or facility.

The Board should make a list of routine tasks necessary for the maintenance of the grounds, facilities, and equipment in the community. While the scheduling of housekeeping for lobbies, hallways and stairwells, and tasks such as lawn care and snow removal is routine, 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 any issues are addressed. When determining the level of maintenance and the priority of each maintenance task, the Association must first consider 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. Some maintenance tasks can be deferred but may result in greater costs. Common interest communities of all types regularly evaluate the maintenance program and verify that routine repairs are properly performed. A filing system to manage and document progress in Association maintenance management is recommended.

### **Risk Management**

Common interest communities must carry property damage, liability, and other insurance to protect against major loss resulting from accidents and injuries on Association common property. Awareness, education, and development of a risk management program can prevent many accidents. Risk management means identifying areas of potential risk, and taking steps to remove or reduce the risk. Risk management will not prevent every accident or eliminate every lawsuit, but it can proactively reduce and minimize the chance, frequency, and severity of accidents.

The purpose of risk management is to prevent personal injury and possible tragedy and 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. Particular attention should be directed to the pool, roadways, and play areas. 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. The property manager and members of the Board should supplement this review with weekly or monthly walk through inspections.

Monthly and annual property inspections will help reduce the risk of 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 members appointed by the Board of Directors. Any risk management program should identify risks, measure the impact on the Association, prioritize the risks according to severity, choose 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 and injury claim, 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, and establish communication channels.

Because a formal risk management program benefits all Association members by reducing the potential for accident and injury and by reducing or stabilizing the cost of insurance premiums, the Association should solicit resident involvement. The Association can publicize the risk management program in the newsletter or Web site and ask residents to identify situations, conditions, and possible hazards that should be reviewed. In exchange, the Association can pass on tips from its insurer or risk management professional to help safeguard residents from

accident and injury on private property within the community. A risk management program is essential to obtaining favorable insurance coverage and premiums.

Risk or hazard identification involves observing visible hazards such as pot holes, broken or uneven sidewalks, rotted trees, broken limbs, play equipment in disrepair, sharp projections, loose handrails, etc. Associations should document the concerns and make a plan to promptly repair or remove the hazard(s). Other hazards are less obvious, such as obscured visibility at intersections, lack of warning signs or barriers or 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 the insurance carrier or a commercial risk management expert. Some items of particular interest in a risk management plan are swimming pools, recreational facilities, sidewalks and floors, and fire evacuation plans.

### People Management

Living in a common interest community with shared facilities requires all members to cooperate with the neighbors to create and maintain an enjoyable living environment. 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 personal activities.

Association rules and regulations generally govern the following:

- Architectural controls and other use restrictions (i.e., noise, trash, storage, parking, etc.) outlined in the Covenants;
- Communication guidelines for residents to contact the Association and Board of Directors; and
- Guidelines for resident conduct and use of 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; maintain the common areas; and protect the property values in the community. Some Association documents 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 guests when using the common facilities. Other Association documents may 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 Association 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

Association rules usually relate to the enforcement of the architectural controls, restriction of specific actions on common and private property, and collection of assessments. An Association with recreational facilities may find that more comprehensive rules are necessary to protect members' rights and reduce 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 consider:

- The proposed rule addresses an identified problem and all reasonable alternatives to adopting a new rule have been made.
- The proposed rule is consistent with the Association's documents. The authority to adopt a rule must be based on the power specifically given to the Association in the documents, and related to the Association's duties and responsibilities.
- The proposed 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.
- The proposed rule must be fair, apply to all residents equally, and be consistently and equitably enforced. Penalties should be appropriate to the infraction and offender and clearly authorized in the governing documents or state law. Consult with the Association attorney prior to enforcing penalties for rule violations.
- The proposed rule must be reasonable and enforceable.

The Board of Directors should publicize a proposed rule, using its available communication, to solicit member comments during the rule-making procedure or schedule a meeting 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. When publicizing a new rule or set of rules, the Board of Directors should clarify to whom the rule applies, when the rule becomes effective, the reason for the rule, and the benefits of implementing the rule.

It is also important to clarify by what authority the rule is enacted and who will enforce the rule. Once adopted, a rule should be published in its final form in the newsletter, on the Association Web site, or mailed to each resident. If appropriate, it should be permanently displayed at the facility to which it applies.

### Rule Enforcement

Rule enforcement should be conducted 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 frequency of the violation. A Board may consider adopting a policy of conveying first notices of violations in person. An informal in-person discussion may be sufficient to result 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 or mailed to the non-compliant owner by certified or registered mail, return receipt requested. The notice should 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; and
- The action required to correct the violation, and a reasonable and acceptable time period for compliance.

The written notice must also state that the owner has a right to be present at a formal hearing and may be represented by counsel (at the owner's choice and expense). The Association may set the hearing date or provide a time limit for the owner to request a hearing, give an acceptable date, and notify the Board of the owner's intent to be represented by counsel. Such hearings are usually held before the Board of Directors, the Covenants Committee, the Architectural Review Committee, or appropriate authority 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. The Board must always remember that the purpose of the enforcement procedure is to gain compliance with the Covenants, Conditions, and Restrictions, rules, and regulations. Within a reasonable time period following the hearing, the Board should discuss all information presented at the hearing and vote 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 owner, suspend the owner'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 to the owner by hand delivery or by registered or certified mail within seven days.

Financial charges and penalties for Covenant and rules 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 owner's property for the purpose of recording and suspending an owner's right to use facilities and non-essential services. However, such assessments must be unpaid for more than 60 days before either provision can be implemented. If there is still no compliance by the owner 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 Act](#) and the [Condominium Act](#), the rules and regulations 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 damages during which the court may also award legal costs and reasonable attorney's fees to the prevailing party in such proceeding.

Charges for a tenant's violations must be assessed against the property or unit owner. 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.

Many Associations find themselves establishing and enforcing rules and regulations for such common concerns such as complaints and resident disputes, pet restrictions, absentee owners, tenants, rental restrictions, parking restrictions, and towing.

### 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 inactions of others and about the Association. Most disputes arise from a simple misunderstanding of requirements or a 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.

An Association and 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. The Board should develop a due process procedural system for handling complaints and disputes.

When applicable, Boards may consider alternative dispute resolution options

such as mediation and arbitration to resolve Association disputes. During 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. During mediation a neutral 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; and mediation does not prevent or preclude either party from using other dispute approaches or judicial action. The mediator guides the parties in recognizing and identifying respective interests and objectives which provides the basis for a jointly acceptable resolution. [Northern Virginia Mediation Services](#) offers community mediation for property owners' or condominium association disputes.

Other complaints can be resolved by correcting the problem through formal action on the part of the Association to enforce existing Covenants, rules, or 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.

For complaints related to internal governing documents, 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 common interest community 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.

For complaints received by the public and members against the Association involving alleged violations of the Property Owners' Association Act or the Condominium Act, the Association should provide instructions on how to file a complaint using the Virginia Common Interest Community Ombudsman's [Association Complaint Procedure](#).

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

notice of the 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 identifying 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.

### *Association Pet 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 and elements jointly owned by all of the unit owners. It is important for an Association to have comprehensive rules governing pets and pet owners because the Association is solely responsible for enforcing Covenants, Bylaws, rules, and regulations. While the [Fairfax County Police Department Animal Protection Police](#) enforces Fairfax County Codes and state laws that pertain to domestic, as well as wild animals, it does not enforce (private) Association rules and regulations dealing with animals.

Pet rules should protect the health, safety, and welfare of Association residents and property rather than penalizing pet owners. Rules should clearly state what is expected of pet owners, and the consequences of noncompliance. Alleged pet rule violations should be submitted in writing with the complainant's signature; 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 Associations governing documents.

For more information on resolving pet problems please refer to [Pet Policies and Pets in Community Associations](#), publications by the Community Associations Institute.

### *Absentee Owners, Tenants, and Rental Restrictions*

Many property owners' and condominium associations have absentee owners who rent single-family houses, townhouses, or condominium units. Under the [Property Owners' Association Act](#) and the [Condominium Act](#) an Association may require the owner to provide some information about the tenants and authorized occupants 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 tenants residing in homes and units under the Association's control. Association Directors and management need to know and understand the Association's relationship to tenants.

Property owners' and condominium association authority and control is restricted to the common grounds, common elements, and the exterior of private properties. The absentee owner, however, is still responsible for any assessments and other legal actions against the property, as provided for in the Association documents. If a rule or Covenant violation occurs due to the tenant's behavior, the Association must issue a violation notice to the owner 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 may be assessed against the property, and it is the responsibility of the owner to collect any reimbursement from the tenant. If a rental agreement provides for the tenant's access to and use of the Association facilities (pool, tennis court, or 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 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 Association governing documents and respective state laws) can be enforced against the tenants even with exemplary behavior. 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 owners of exposure to and responsibility for tenant's behavior during the term of the lease. A prudent owner will provide in the lease agreement that the tenants must adhere to the Covenants, Conditions, and Restrictions, rules, and regulations of the Association and responsibility for reimbursement of any financial assessments during the tenancy.

Condominiums attract the majority of absentee-owner rental-investors, which can cause several difficulties. When unit rentals exceed 30 to 40 percent, 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 percent of total units, above which finance for resale mortgages will not be offered. Consequently, many condominium associations have attempted to restrict or prevent the rental of the privately owned units. Current unit owners may have a legitimate claim that any such rental restriction is a violation of rights because the unit was purchased for

investment when there were no restrictions. Some condominiums 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.

While the Condominium Act permits the Association to establish and enforce occupancy standards and limitations, the County Zoning Ordinance [Article 2, Part 5, Section 2-502](#) establishes and limits how many people can live in a single residence. For questions regarding those limitations, contact the [Fairfax County Department of Code Compliance](#).

### *Association Parking Restrictions*

Due to limited parking spaces and the number of vehicles, many property owners’ and condominium associations have adopted or are planning to adopt restrictions or prohibitions covering inoperative vehicles; those with expired decals, inspections, and registrations; and over-sized, and commercial vehicles. The application of an Association’s official parking policy depends upon the ownership of the parking location. Property owners’ and condominium associations have the authority to adopt a restrictive or prohibitive parking policy on the Association’s privately owned roads and common grounds. Complaints are common, and Associations must discuss rules to identify and resolve the problems. Parking rules and restrictions is one subject that affects every member. It is advisable to survey the full membership or publicize a general meeting to foster member comments, input, and discussion before the Board finalizes parking rules by policy adoption.

Most Associations have rules concerning the parking, storage, maintenance, repair, and guest and visitor parking of all vehicles on privately owned Association property. These rules and regulations cannot apply to public streets within the Association’s boundaries, and it is the Association’s responsibility to enforce, by violation notice and towing, parking restrictions on private 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 Fairfax County Ordinance.

The County’s [Motor Vehicle and Traffic Ordinances](#) define and outline parking limitations of personal and commercial vehicles on private and public properties. Board of Directors are advised to refer to the Fairfax County Ordinances and to consult with an Association attorney when considering adopting or changing the Association’s parking policy. 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

consequences of non-compliance. Enforcement is best initiated by placing a violation notice on the vehicle and 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 an assessment of charges against the owner's property. If the violation continues, state and Fairfax County Codes authorize towing of the vehicle, provided the property is conspicuously posted with warning signs.

### *Towing from Private Property*

The Code of Fairfax County, [Section 82-5-32](#), provides for the towing and storage of vehicles unlawfully parked and parked in violation of Association rules and regulations on Association property. The towing of a private vehicle 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. 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. For information about the minimum requirements for [trespass towing](#) in Fairfax County or other concerns related to a towing company, contact the Department of Cable and Consumer Services' [Regulation and Licensing Branch](#) at 703-324-5966.

### Law Enforcement

The Association may designate a representative to contact the Fairfax County Police Department when problems occur in the common areas and facilities. Contact the [closest district police station](#) for further information.

The Code of Fairfax County [Chapter 31 Peddlers, Solicitors and Canvassers](#) requires peddlers and vendors selling goods or services door-to-door or from a temporary location in Fairfax County to obtain a Solicitors License. Solicitors Licenses are issued by the [Department of Cable and Consumer Services, Regulation and Licensing Branch](#). The ordinance lists prohibited acts and legal recourses available for alleged violations. The Police Department will respond to trespassing calls on commonly owned or controlled property if the area is posted with "No Trespassing" signs. 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 legal counsel prior to swearing out any such warrant.

### 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

## CHAPTER 3 – ASSOCIATION MANAGEMENT

support and enhance the social and physical environment of the Association. 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 Association. To explore volunteer opportunities with Fairfax County community-based organizations, visit [Volunteer Fairfax](#).

## CHAPTER 4 – ASSOCIATION OPERATIONS AND FINANCES

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 Association, and carrying out its administration and other responsibilities. A budget estimates these costs and 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 assessments are justified and money is 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; however an Association may have discretion over the level of service or maintenance provided. Some Associations 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, and making sure that the Association's obligations are adequately fulfilled.

The process of developing a budget is an opportunity to evaluate the quality and quantity of the services provided and to determine what 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 conduct resident surveys, hold committee 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.

### **Annual Budget**

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

assessment levels.

### Inventory

An Association should have a detailed inventory of all land, facilities, and improvements in the community. A site plan can be obtained from the [Fairfax County Land Development Services Building Plan Review](#) and the square footage of Association's lawn, sidewalks, streets, and facilities can be measured and calculated. Preparation of an inventory is time consuming but once completed it will provide the Association with accurate data to use in estimating budget-related expenses.

An inventory of equipment, furniture, and other Association property should also be made, including the age, cost, condition, manufacturer, and all current warranties and guarantees. This is necessary to determine insurance needs and asset values. Once the Association identifies maintenance and service responsibilities and 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 advertisements, 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.

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 consider an amount to budget for bad debt in order to cover anticipated expenses.

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 taking 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 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

For 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 and 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. 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 and reflects the cost of a service or facility more specifically than a line-item budget, because it shows a detailed list of expenses associated with each service or facility.

Financial management of property owners' and condominium associations almost always uses some combination (or all) of the following expense categories: 1) *administrative* - management fees, office supplies, furniture, computer systems, taxes, and insurance; 2) *operating* - land services and grounds maintenance, snow removal, property inspections, reserves, swimming pools, community centers, community programs, painting, and recreational facilities maintenance; 3) *unit services* - utilities, trash collection, newsletter, and other communications.

### 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 and 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 increase its annual assessment, levy a special assessment, borrow money, or delay necessary replacements or repairs when faced with the expense.

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 reserve study of Association facilities, and to include a projected schedule of repairs and renovations and estimated costs.

In addition to eventual replacement or renovation, some facilities will require maintenance. 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 may 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 needed.

The Virginia [Property Owners Association Act](#) and the [Condominium Act](#) require every Association to conduct a reserve study at least once every five years, and to review the most recent study at least every year. This requires the respective Boards to stay current with the Association's real maintenance and replacement needs and costs, and to prevent falling behind and requiring a special assessment. Inflation increases all costs but material costs often increase more rapidly than the rate of inflation. 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 difference in an Association's income tax liability, and should be discussed with a common interest community attorney or accountant. 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.

Some Associations require that reserves be kept in a federally insured institution to limit 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 [Property Owners' Association Act](#) and the [Condominium Act](#) provides the authority to Associations to levy special assessments. Association officers should be aware of the information on [Americans with Disabilities Act](#) (ADA) and the [Fair Housing Act](#) (FHA). For most Associations, ADA and FHA requirements are likely to be an unplanned, unbudgeted but mandatory and costly improvement to Association facilities. Failure to provide such 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 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 failing to take action. The Board should not commit to spend the money until the membership disapproval time has passed.

For more information on preparing budgets, please contact an accountant that specializes in common interest community Association finances or refer to the [Not-For Profit Entities Guide](#), a publication prepared by the PricewaterhouseCoopers Not-for-Profit Industry Service Group.

### Operating Expenses

Many variables affect the cost of operating and maintaining the common facilities of an 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, life span of the facilities, hours of operation, and utility costs also affect operating expenses. 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. Common expenses that may impact the cost of operating an Association should be considered.

### Utilities

When projecting utility costs for budget purposes, there are several general steps to be followed, including:

- An itemized inventory of all facilities and appliances that use the metered commodity, the location of each meter, and the facilities and appliances served;
- Information from past billings (1-5 years if available) to average the monthly consumption and seasonal rate variations. If the Association has more than one meter that serves similar facilities, note any variations in usage that may indicate waste;
- The current rate schedule(s) used for billing; any rate increase, surcharge, or fuel adjustment factor expected, and effective implementation; and
- 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 analyzing utility usage and eliminating waste. Contact [utility providers](#) for advice about conservation measures that can be taken by common interest community associations.

### *Electricity*

Electrical costs for most Associations are limited to those incurred for outdoor lighting and recreational facilities. Condominium unit owners' Associations are responsible for the electricity used in common areas and may also be responsible for paying for all electrical consumption in the development.

#### *Master-metering, 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 electrical usage. Sub-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 sub-metering. 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. 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*

The Fairfax County Streetlight Program provides lighting on public streets in the Virginia Department of Transportation (VDOT) state secondary road system to enhance public safety. Privately owned streets do not qualify for such lighting. For the criteria to qualify for Fairfax County-provided street lighting, an Association adjacent to public streets in the state system should contact the [Fairfax County Department of Public Works and Environmental Services](#).

Maintenance costs for outdoor lighting vary, depending on the type of lighting, amount of illumination produced by the fixtures, and the life expectancy of the lamps. 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 common interest community-owned systems. 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 present outdoor lighting with a more energy efficient lighting should research the conversion and maintenance costs and compare the long-term savings attained through reduced energy usage before making the change.

Reserves for outdoor lighting fixtures should be based on replacement cost and life expectancy. An Association may want to base reserve levels on the cost of replacing the present lights with a newer and more energy efficient lighting system, rather than the replacement costs of the lights currently installed.

### *Natural Gas*

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 the 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 Association's side of the gas meter is the Association's responsibility. 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.

### *Water*

[Fairfax Water](#) 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 water service. Most property owner's and condominium associations are responsible only for the water used by the 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. Associations interested in changing to individual meters should contact its water supplier for more information and guidance on implementing water saving techniques.

Common interest 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 the plumbing system connects to the main system.

### *Water for Swimming Pools*

Property owners' and condominium association swimming pools must be sub-metered separately from the domestic supply and must be filled by May 15 to avoid the high-peak-use rate that becomes effective as of June 1 each year. To be exempt from sanitary treatment charges on the pool water volume, an Association must contact [Fairfax Water](#) each year to request an Exemption Form which must be completed, signed, and returned to Fairfax Water. For more information about the Fairfax County Pool Ordinance and permit requirements, contact the [Fairfax County Health Department](#).

### *Sewer Service*

[Fairfax County Department of Public Works and Environmental Services](#) 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 the Association's responsibility. If a sanitary sewer emergency occurs, contact [Residential Waste Management](#) to determine responsibility for repair.

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 number of unit residents, depending on the governing documents. Various water suppliers in the 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](#) and [Fairfax](#), and the towns of [Herndon](#) and [Vienna](#) levy sewer charges for customers using those sewer systems.

### Wells - Fresh Water Domestic 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 disposal of fertilizers, herbicides, pesticides, motor oil, solid wastes, paint solvents, detergents, cleansers, and other toxic household chemicals and substances constitute a 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. If not properly 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 repair, whether initial drilling and grouting, or repairs and additions to equipment on existing wells must be performed 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 inspect the work and 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 personal injury claims stemming from contamination of groundwater resulting from maintenance activities, the maintenance staff should be made aware of the existence of the wells. Maintenance procedures should be tailored to prevent potential contamination of the groundwater, either by surface runoff or by ground percolation. An Association can help to protect groundwater quality by informing the members through an education program that focuses on the proper disposal of toxic and hazardous substances.

### Septic Tanks

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.

An on-site septic system for the public facilities (pool bathhouse, recreation center, rest rooms, kitchen, etc.) in an owners' Association must be regularly pumped. The Association should include this required service in the 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](#).

[Virginia 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 [Fairfax County Health Department](#) to verify compliance with the law. 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 [Fairfax County Health Department](#).

### Refuse, Solid Waste, Trash Collection

Refuse and recyclables collection in Fairfax County is provided by public or private services regulated by Fairfax County Ordinance [Section 109.1 Solid Waste Management](#). [Fairfax County Department of Public Works and Environmental Services](#) provides weekly curbside collection of refuse and recyclables for customers in legally-designated [Sanitary Districts](#) approved by the Board of Supervisors. This service is provided for an annual fee not included in the County property taxes.

Owners of single-family and town homes not living in Sanitary Districts do not pay this service fee and must contract for curbside collection of refuse and recyclables with a privately-owned collection company. Privately-owned refuse and recyclables collection companies must obtain a Certificate to Operate from the County according to Section 109.1-4-2 of the Fairfax County Code. Any Fairfax County resident not living in a Sanitary District may opt to take refuse and recyclables to either of two Fairfax County refuse disposal and recycling facilities.

The Fairfax County Department of Public Works and Environmental Services regulates [privately-owned refuse collection firms](#) that operate in the County, and enforce the County's solid waste management regulations. To report missed collections or to obtain additional information, please contact the [Fairfax County Department of Public Works and Environmental Services](#).

### Recycling Collection

The Fairfax County Code requires recycling pickup service to be provided by every refuse collection company that operates in the County. Property owners' and condominium associations that contract for curbside refuse and recycling collection for all Association properties are required to include a recycling system in the service contract. The collection company must offer this recycling service to the property owners' and condominium association and the Association must accept it. All solid waste collectors must provide collection of recyclable materials to all customers.

Townhouse associations may seek County approval of an [alternative yard waste recycling system](#) where the Association hires or contracts for landscaping services to maintain the common grounds, including removal of all yard waste materials. An Association must complete the [Alternative Yard Waste Recycling System Application for Townhouse Communities](#). If the alternate recycling system is approved, an approval letter will be prepared and sent to the townhouse association and will be valid for period of two years, after which time the approval must be updated.

The fundamentals of recycling in multiple-family dwellings are the same regardless of whether the structure is garden style or high-rise. Associations and property managers are encouraged to work with the solid waste collector to determine how to source-separate and collect recyclables so that this information can be communicated to the residents. The solid waste collectors and property managers should jointly evaluate how much solid waste is generated at the property, what equipment is needed for storage and collection, and how often the waste and recycled materials are collected. This should assist in negotiating the terms of a contract with a refuse and recycling collection company to best meet the needs of the residents.

Many property owners' associations contract for refuse and recycling collection services for all residents and include the cost in the monthly assessment. By 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.

### Lawn and Grounds Maintenance

An Association's maintenance responsibilities will depend upon the size and type of common areas, structures, landscaping, and use. A comprehensive grounds maintenance plan will: 1) present a neat community appearance, 2) preserve the Association's investment in grass, trees, shrubs, and property, and 3) help maintain property values. A comprehensive maintenance plan usually includes an annual and long-term program. For more information about lawns and gardens contact the [Virginia Cooperative Extension](#).

Many Associations contract with professional landscaping companies for some or all of the common grounds care. For more information and guidance regarding lawn and garden maintenance, please refer to the Virginia Cooperative Extension's [publications and educational resources](#).

### Retention Basins or "Wet Ponds"

The County Department of Public Works and Environmental Services does not maintain wet ponds. Current County policy requires that wet ponds, if built to serve residential developments, must be constructed on Association common land and are the financial, legal, and maintenance responsibility of the Association. For guidance on maintaining wet ponds, please refer to the United States Environmental Protection Agency's [National Menu of Best Management Practices \(BMPs\) for Stormwater-Post-Construction](#).

### Soil and Water Conservation

Many Associations have common areas that include lakes, ponds, streams, dams, and 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](#), the [USDA Natural Resources Conservation Service](#), and the [Virginia Department of Forestry](#) assist Associations in addressing conservation issues.

### Snow Removal

Associations must provide snow removal for private streets and parking areas. Budgeting for snow removal can be a challenge because snow removal costs can be affected if the number of snow falls deviates from the average. There are three basic types of contract arrangements used for snow removal services in this area: 1) *flat fee or "insurance" contract* where a flat fee is charged for all snow removal for an entire season; 2) *hourly contract* where an Association is billed at an hourly rate and guaranteed streets will be automatically plowed after two or more inches of snow has fallen; and 3) *retainer contract* where the Association pays a flat fee based on estimated costs and services are charged as performed, allowing for separate billing for services rendered above the estimated cost.

Clarify the method of snow removal to be used and whether the contractor will remove snow from the Association's sidewalks. It is helpful to the contractor, particularly if the Association 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.

### 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 routine maintenance requires professional expertise. The life span of the streets and other paved areas depends upon the initial construction, drainage, annual climate 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 limited number of public roads on an interim basis until upgraded and accepted into the VDOT State Secondary System for maintenance. VDOT does not maintain subdivision streets unless constructed according to VDOT standards, dedicated to public use, and accepted into the VDOT system of roads.

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. 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.

The life span of an Association's streets will depend upon the quality of construction and the degree of maintenance received. A properly constructed and maintained street should last at least 20 years before major reconstruction is required. 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.

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.

## CHAPTER 4 – ASSOCIATION OPERATIONS AND FINANCES

Pavement maintenance usually consists of periodic surface treatments to replace asphalt worn away by traffic and weather, and timely repair of surface defects, cracks, and small pot holes to prevent major failures. Regular inspection of the pavement is essential to detect problems. An Association should consider several professional opinions and compare cost estimates before contracting for a specific application.

Concrete sidewalks, curbs, and gutters, if properly constructed with a good foundation, may last 50 years. 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 seasons of a full year.

Some Associations set aside reserves based on the replacement cost of paved areas divided by life expectancies and use these funds for major maintenance projects as necessary. Other Associations develop an annual and a multi-year pavement maintenance program. 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 five years, resurfacing asphalt streets every 10 years, and major concrete work in 20-25 years, etc.

When planning for pavement maintenance, the inventory of paved areas should note the age of each segment of sidewalk, paved surface, and street. 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. Pavement maintenance and repair costs are subject to many variables including: price fluctuations; mobilization costs for equipment, labor, job size, seasonal weather, site preparation; and clean up/restoration of the area affected.

For more information about the design, construction, maintenance, and repair of different applications, contact a concrete and asphalt professional or refer to the [Washington Metropolitan Chapter Community Associations Institute](#) for a provider that specializes in common interest communities.

### Swimming Pools

Swimming pools operated by property owners' and condominium associations are considered public pools and must comply with the Fairfax County [Water Recreation Facilities Ordinance](#). [Fairfax County Health Department](#) inspects and issues water

recreational facilities permits. Pool operating expenses depend upon the size of the pool, the hours of operation, length of season, and the scope of contracted management services. 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. Pool operating expenses also include preparation of the pool, deck, and related facilities in the pool area for the swimming season, closing the pool and preparation for cold weather, 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 tasks.

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, cleaning equipment, 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, and oversee special Association parties or private functions.

Some Associations manage the pool 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 the pool, the Board of Directors should look at liability risk and the cost of liability insurance versus the cost of contracting with a pool management company.

Proper maintenance of the pool and equipment is essential to preserve life expectancy and prevent premature repairs. However, deterioration is a normal process and severe winter weather can cause structural damage and require repairs. 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. One method of obtaining specifications for repairs is to hire a reputable pool builder or designer to evaluate 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 [Pool & Hot Tub Alliance](#).

### Tennis Courts

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. Maintenance requirements of specific surfaces can be obtained from the manufacturer or from a tennis court

contractor. Tennis court maintenance also includes repair and replacement of accessories. Publications and resource materials about tennis court maintenance is available from the [United States Tennis Association](#).

### Painting

Associations are responsible to maintain the buildings' appearance and to protect exposed surfaces from the weather. The frequency with which painting is required depends upon the materials and climate. A contractor or a paint manufacturer's representative can assist with determining an Association's painting needs, recommended schedule, and cost estimate.

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 to make modifications.

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 most cases, 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 by the Association.

The Virginia [Uniform Statewide Building Code](#) (USBC) imposes the requirements of the 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. The ADA applies to structures and buildings and to areas of access to these facilities. In addition to complying with the requirements of the Virginia USBC, existing areas must be upgraded for accessibility as additions and interior alterations are constructed. For information on the Virginia USBC and new structures, additions, alterations, and questions regarding the ADA application to non-structural site developments, please contact the [Fairfax County Land Development Services Building Plan Review](#).

Contractors must comply with ADA requirements and should know 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 financial burden that may necessitate passage of a special assessment. For more information, please contact the [ADA Standards for Accessible Design](#).

### Contracting Out for Services

The Board of Directors may consider bidding out projects to qualified, licensed, bonded, and experienced contractors and then incorporating those costs into the annual budget. Typically, the agreement is for materials, products, services, or any combination of these in exchange for a specified lump sum price, 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, non-performance, inferior workmanship, property damage, worker's compensation, or other claims. Contract procedures outline the necessary steps, including a member or representative of the Association who is responsible for each step, and includes completion schedule to ensure that the materials, product or service is available when needed. No matter what the operating expense, when contracting, the following steps should be taken:

#### *Clearly Define the Scope of Work and Services*

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, available options, and cost estimates.

#### *Draft Specifications for the Project*

The specifications should 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.

#### *Research Permits and Inspections*

Major improvements such as installation of a tennis court or swimming pool usually require more than one County permit to ensure the project complies with County zoning requirements and state and local building Codes. The contractor is responsible for obtaining required permits. For more information, contact [Fairfax County Land Development Services Development Process](#)

### Overview.

#### *Compile Contractor List*

Using the recommendations of other Associations, personal experience, membership list of professional trade associations, etc., compile a list of potential contractors.

#### *Prepare Request for Proposal (RFP)*

Prepare an RFP letter inviting selected firms to submit bids or make presentations to the Association. The letter should include 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, number, and email of the Association's point of contact.

#### *Check References*

Once bids have been read and reviewed, thoroughly check the reputation, experience, and references of the preferred firms. Contact the [Fairfax County Consumer Affairs Branch](#), the [Fairfax County Department of Code Compliance](#), the [Virginia Department of Professional and Occupational Regulation](#), and the [Better Business Bureau](#) to determine if any complaints have been filed against the contractor and how they were resolved.

#### *Verify County and State License Status*

Contact the [Department of Tax Administration's \(DTA\) Personal Property and Business License Division](#) to confirm if the contractor is properly licensed to do business in Fairfax County. Contact the [Virginia Department of Professional and Occupational Regulation](#) to inquire about requirements for state licensing.

#### *Conduct Interviews, Analyze Bids, and Select Contractor*

Schedule an interview with the potential contractor(s). Conduct a detailed analysis of contractor bids. Evaluate the firm's reputation, experience, and interview results and select the best proposal for the Association.

#### *Review the Contract*

Have the contract reviewed by the Association attorney to ensure terms are in the best interest of the Association and to minimize the Association's risk of inadequate protection provisions, loss of accumulated reserve funds, and exposure to liability claims. Review the contract for the following items:

- Lines of authority;
- Scope of the work;

- Permits or inspections;
- Total cost and terms of payment;
- Time-frame of the contract;
- Responsibility for liability insurance;
- Damages to Association property;
- Recourse provision;
- Process for modifications;
- Conditions for termination of contract; and
- Warranties.

The Association should appoint an Association liaison who is responsible for developing a good working relationship with the contractor, monitoring the work and progress of the project, and resolving problems. A well-drafted contract and regular communications will help to make an Association's experience with contractors successful.

### Administrative Expenses

In addition to the management, operating, and maintenance expenses described in the preceding section, there are costs attributed 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 property owners' and condominium associations.

#### Taxes

Property owners' and condominium associations may be required to file tax returns with a number of different agencies. The Board of Directors should consult with the Association's certified public accountant, tax advisor, and the applicable governing entity for instruction and forms.

#### Regulatory Fees

In 2008, the Code of Virginia was amended to establish the Common Interest Community Board which was assigned the authority of managing the [Common Interest Community Management Information Fund](#). Under the laws, all condominium and

property owners' Associations are required to file an annual report and filing fee with the [Common Interest Community Board](#) in the Department of Professional and Occupational Regulation. The fee is to be used at the discretion of the Common Interest Community Board for research and education to promote the operation of common interest communities.

### Insurance

Most property owners' and condominium 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. Associations should consult with several insurance companies with experienced specialists in common interest community Association affairs and issues, not only for competitive rates, but also for opinions and recommendations.

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 explicit as to the amounts and types of insurance that must be maintained. These requirements should be reviewed to make certain that any insurance purchased is in compliance with the documents. A general overview of common insurance coverages is provided:

#### *Property Damage Insurance*

Property damage insurance covers the costs to repair or reconstruct buildings if damaged or destroyed. Property damage insurance should cover all common property and the Association's personal property. Insured property should be covered for its full replacement value.

Most policies contain deductibles which can reduce the premium and the need to process small claims. The terms and application of the deductibles in the policy should be reviewed to protect the Association from incurring multiple deductibles.

#### *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 comprehensive general liability policy covers bodily injury, property damage, and medical payments. 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.

### *Directors and Officers Liability Insurance*

Directors and Officers Liability Insurance, or “D and O”, 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. If an Association’s Bylaws contain a mandate to protect Directors and officers (or others) from personal liability, the Association must bear the expense of defending its officers and representative(s). The Association’s Board of Directors and counsel should carefully weigh each 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.

### *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. 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, consult with the Association insurance agent to discuss the recommended bond value. At the very least, the fidelity bond value should equal the maximum amount of funds, including reserves, on hand at any given time.

### *Worker’s Compensation*

The Virginia Worker’s Compensation Act mandates corporations (common interest community associations), firms, or persons that have regular employees to furnish worker’s compensation insurance coverage at no cost to the employee. Contact the [Virginia Workers’ Compensation Commission](#) for more information about Association obligations.

### Legal Services

Property owners’ and condominium associations must act in accordance with the provisions of the governing documents and applicable laws. Consequently, an Association may want to retain an attorney to provide regular 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, thereby minimizing legal risks while maximizing legal rights.

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. Contact the [Fairfax Bar Association's Lawyer Referral Service](#) or the [Washington Metropolitan Chapter Community Associations Institute](#) for referrals to attorney firms that specialize in common interest community law.

### Audit Services

A financial audit is a thorough examination of an organization's books, records, and accounts to verify accuracy and portrayal of the organization's financial status. While the Property Owners' Association Act and the Condominium Act are silent regarding a financial audit, the [Virginia Nonstock Corporation Act](#) does require an annual financial audit of any Association incorporated under the Act. An audit serves to protect the treasurer and management firm, and to assure the assessments have been managed 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.

It is important that an auditor hired by an Association be a Certified Public Accountant who is experienced in auditing common interest community Associations, and who is knowledgeable about the financial organization and tax status of common interest communities. Contact the [Washington Metropolitan Chapter of Community Associations Institute](#) or the [Virginia Society of CPAs](#) for referrals.

### Financial Procedures

An Association should have accurate and up-to-date financial information 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.

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 financial records are essential to keep the Board of Directors and Association members informed about Association finances. 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 the 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 Methods

An Association must have a reliable accounting method in order to maintain accurate and complete records. The purpose of an accounting method is to record, sort, and summarize an Association's financial transactions and to provide the necessary information to prepare an Association's financial statements.

### 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. 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 property and equipment. Liabilities will usually consist of outstanding bills and accrued taxes. 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 sound 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. 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 receipt and payment.

### *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. 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. Many Associations 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.

It is necessary for an Association to have a delinquent assessment procedure. 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:

- A notice is sent to the owner after the payment becomes delinquent, including a late charge that may be imposed.
- 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 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 sales 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 accept the consequence of its error.

Associations are solely responsible for collecting assessments and, if necessary, for filing a lien against the property. A lien does not guarantee payment of the outstanding debt, but it may delay or stop a property sale transaction. In most cases, this is enough leverage to force the delinquent owner to pay the outstanding debt. The [Property Owners' Association Act](#) and the [Condominium Act](#) provides for the enforcement of liens for the purpose of collecting delinquent assessments on a member property.

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 reviewed. 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 to initiate the 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 time for delivery of the disclosure package. The filing of a lien puts the liability on the delinquent owner to pay the outstanding balance, because the lien prevents completion of the sale. The Board of Directors should consult the Association attorney regarding the legal requirements for effectively filing a lien and the Association's rights within the governing documents related to actions that can be taken against a delinquent owner.

### Securing Association Assets

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 manage the daily operations of the Association, including collections and disbursements, the Board cannot abdicate its fiduciary responsibilities. Many Board members believe it is solely the financial auditor's role to uncover weaknesses, discrepancies, and irregularities in the Association's financial systems and procedures during the mandatory annual audit. However, since most audits only happen once a year, the Board has to manage the Association's assets between audits. The Board is responsible and liable for any unauthorized use of Association assets for purposes other than Association business or welfare. Adequate checks and balances and internal control procedures are designed to identify irregularities so that the Board of Directors can take timely and corrective action.

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. While it is difficult to prevent every irregularity, a system of internal controls 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.

## APPENDIX – COMMON INTEREST COMMUNITY RESOURCES

Below is a list of local, state, and federal resources to assist in effectively governing Associations. When available, an electronic link to the resource is included.

### Common Interest Community Organizations and Resources

#### [Community Associations Institute \(CAI\) National Office](#)

703-970-9220

Provides published information, training programs, and professional references.

#### [CAI - Washington Metropolitan Chapter](#)

703-750-3644

Serves the educational, business, and networking needs of the community Association industry.

#### [Fairfax County Consumer Affairs Branch](#)

703-222-8435

Provides advice and guidance to homeowner and condominium Associations and hosts “*Your Community, You’re Connected*” on [Fairfax County Government Channel 16](#).

#### [Fairfax County Office of Public Affairs](#)

703-324-3187

Serves as the Information Connection to and for Fairfax County government.

#### [Fairfax County Federation of Citizens Associations](#)

Promotes the interest of homeowners and civic associations in Fairfax County, through an independent volunteer organization.

### Community Safety

#### [Fairfax County Fire Prevention Division – Community Risk Reduction](#)

703-246-2126

Provides fire suppression, emergency medical, technical rescue, fire prevention, and educational services.

#### [Fairfax County Police Department - Neighborhood Watch](#)

703-691-2131

Promotes “Neighborhood Watch” safety, security, education, and crime prevention programs.

## APPENDIX –COMMON INTEREST COMMUNITY RESOURCES

### Fairfax County Government Resources

#### [Fairfax County Animal Protection Police](#)

703-691-2131

Receives reports through the County Police non-emergency dispatch number.

#### [Fairfax County Circuit Court Land Records Division](#)

703-691-7320

Maintains copies of property owners' and condominium association Declarations, Deeds of Dedication, and Bylaws.

#### [Fairfax County Consumer Affairs Branch](#)

703-222-8435

Mediates consumer-to-business complaints, tenant-landlord disputes, and cable concerns; answers advice inquiries; and provides consumer educational outreach presentations.

#### [Fairfax County Department of Code Compliance](#)

703-324-1300

Enforces the Fairfax County Codes and Ordinances which regulate property maintenance and construction in Fairfax County.

#### [Fairfax County Department of Planning and Development](#)

703-324-1380

Maintains the County's Zoning Ordinance and Comprehensive Plan and provides proposals, advice, and assistance on land use, development review, and zoning issues.

#### [Fairfax County Department of Public Works and Environmental Services - Recycling and Trash](#)

703-324-7329

Provides guidance for compliance and enforcement of the rules for separating recyclables from trash.

#### [Fairfax County Department of Tax Administration](#)

703-222-8234

Maintains real estate assessments; provides assessment analysis and information about appeals, relief, and exemptions.

#### [Fairfax County Division of Environmental Health](#)

703-246-2201

Provides information on sanitary standards, wells and septic systems, maintenance and repair; issues pool permits; and conducts annual pool inspections.

## APPENDIX –COMMON INTEREST COMMUNITY RESOURCES

### [Fairfax County Land Development Services - Site Development](#)

703-324-1780

Provides support to religious and community groups, the development community, residents, and other County agencies throughout the site development process.

### [Fairfax County Permit Application Center](#)

703-222-0801

Issues building, electrical, mechanical, plumbing, home improvement, deck, garage, and demolition permits.

### [Fairfax County Regulation and Licensing Branch](#)

703-324-5966

Issues licenses, permits, and registrations; and regulates the taxi cab industry, trespass towing, shared mobility device operations, canvassers, promoters, solicitors, charitable organizations, precious metal and gem dealers, pawnbrokers, massage establishments and therapists, and going-out-of-business sales.

### [Fairfax County Stormwater Management Division](#)

703-324-7329

Controls runoff (rain, melting snow, and ice); draining off roads, sidewalks, driveways, roofs, and other hard surfaces; and provides educational outreach.

### [Fairfax County Zoning Administration Division](#)

703-324-1314

Enforces, maintains, and administers the provisions of the Fairfax County Zoning and Noise Ordinances.

## Lawn and Garden Landscaping

### [Fairfax County Trees and Urban Forest Management](#)

703-324-1770

Serves as the primary County agency responsible for managing trees and forests in Fairfax County. Provides information about tree pests and hazardous trees.

### [Northern Virginia Soil and Water Conservation District](#)

703-324-1460

Offers environmental leadership, technical assistance, and environmental education, as a self-governing division of the Commonwealth of Virginia.

## APPENDIX –COMMON INTEREST COMMUNITY RESOURCES

### Legal References

[Fairfax Bar Association](#)

703-246-2740

Provides information about legal matters.

[Fairfax Bar Association's Lawyer Referral Service](#)

703-246-3780

Provides referral services, as a non-profit public service of the Fairfax Bar Association.

[Legal Services of Northern Virginia](#)

Provides low-to-no cost legal advice and service to the region's low-income and neediest populations.

### Pavement Maintenance

[Fairfax County Department of Public Works and Environmental Services](#)

703-877-2800

Provides information about sidewalk, bridge and roadway maintenance, and assists in determining maintenance responsibility.

[Virginia Department of Transportation \(VDOT\)](#)

800-367-7623

Provides public road maintenance and snow removal.

### State Regulatory Authorities

[Common Interest Community Board](#)

804-367-0362 Board Office

804-367-8510 Licensing Section

Regulates common interest community managers, as well as certain employees of licensed management firms. Maintains registrations and annual renewals of property owners' and condominium associations.

[Office of the Community Interest Community Ombudsman](#)

804-367-2941

Offers assistance and information to Association members regarding the rights and processes available to them.

## APPENDIX –COMMON INTEREST COMMUNITY RESOURCES

### Utilities

#### [Columbia Gas of Virginia](#)

800-543-8911

800-544-5606 Emergency Service

Provides natural gas service for parts of Chantilly and Herndon.

#### [Dominion Energy](#)

866-366-4357

Delivers electric service for residential and commercial buildings and outdoor street lighting.

#### [Fairfax Water](#)

703-698-5800

Manages an integrated water system for supplying and distributing water among Fairfax County addresses.

#### [Northern Virginia Electric Cooperative](#)

703-335-0500

888-335-0500

Delivers electric service to residential, commercial, business, and government customers.

#### [Washington Gas](#)

844-927-4427

Delivers natural gas to customers in Fairfax County and the surrounding areas.

**Fairfax County Department of Cable and Consumer Services**

12000 Government Center Parkway, Suite 433

Fairfax, VA 22035

703-222-8435 TTY 711

<https://www.fairfaxcounty.gov/cableconsumer/csd/consumer>  
[www.facebook.com/fairfaxcountyconsumer](https://www.facebook.com/fairfaxcountyconsumer)



To request this information in an alternate format, call the Department of Cable and Consumer Services, 703-222-8435 TTY 711.



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