



BRANDERMILL REGION MEN'S CLUB
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COMMON INTEREST COMMUNITIES

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Introduction & Background



Purpose and Benefits of **Common Interest Communities**

- Government
 - Purposes
 - Benefits
- Property Owners
 - Purposes
 - Benefits
- Others?

TRIVIA



Overview – Creation of Condominiums and POAs

- **Types of Common Interest Communities**
 - Condominiums
 - Planned communities (POAs, HOAs)
 - Cooperatives
- **Creation of CICs**
 - Declarant (a.k.a. “developer”)
 - Covenants (a.k.a. “declaration”)

Identifying the Players

- Developers/Declarants
- Owners
- Association
- Board of Directors
 - Officers
 - Committees
- Management companies
 - Managers



Roles of the Players

- **Role of Association**
 - Legal entity / mandatory m-ship
 - Owner of Common Area (POA)
 - Operator, supervisor, maintainer
 - Enforcer

- **Role of Board of Directors**

- “Executive Organ”
- “All powers not reserved to owners”
- Operate, administer, manage common areas
- Determine assessments (?)
- Fiduciary as to funds
- Enforce covenants
- Set policy, oversee management
- Making business decisions

- **Committees**

- *Limited tasks assigned by docs or Board*

- **Owners**
 - Members (customers); electing board main power
 - Amending Documents
 - Other matters requiring owner approval
- **Management Agent**
 - Carries out day-to-day tasks
 - Assists the Board in making decisions
 - Expert advice
- **Other professionals** (Accountants; lawyers; engineers; contractors)
 - Hire as needed – like any business

Documentary Foundations

Condominiums

- **Declaration (Old term: Master Deed)**
 - Property Description / unit boundaries
 - CEI/Par Value Table
- **Bylaws**
 - Voting / Meetings / Board authority / Use restrictions / Maintenance Responsibilities
- **Plats & Plans**
- **Rules & Regulations (e.g., Policy & Administrative Resolutions)**
- ***Optional: Articles of Incorporation***

Documentary Foundations

Property Owners' Associations

- **Declaration of Covenants/Conditions/Restrictions**
 - Plat
 - Also → Deed of Resubdivision
- **Bylaws**
 - Voting / Meetings / Board
 - Not usually recorded
- **Rules & Regulations** (e.g., Policy/Resolutions, Architectural or Design Guidelines)
- **Articles of Incorporation**

Statutory Foundations

- **Condominiums**

- Virginia Condo Act: Va. Code § 55.1-1901

- **Property Owners' Associations / HOAs**

- POA Act: Va. Code § 55-1801

- **Corporations**

- Nonstock Corp. Act: Va. Code § 13.1-803

Where Owners and their Associations Might Collide



Assessments

- Sustainability of operation and management of financial affairs
- Upkeep of structures and facilities
- Provision of services
 - Landscaping
 - Trash collection
 - Snow removal, etc.

Effect of Delinquencies

- Budget Deficiencies
- Reduction in community-supplied services
- Additional burden to paying members
 - higher fees
 - special assessment
- General negative impact on property values and community as a whole

Collecting Assessments

- **Enforcement/Collection Methods . . .**

- Late fees, interest and collection costs? Suspend privileges?
- Filing of lawsuits against owners to obtain judgments
- Lien authority and procedure set forth in both Acts –affects title, allows nonjudicial foreclosure; secured creditor; lien priority

Responding to Owners' Request for Forbearance

- Payment plans
- Waiver of late fees, interest, etc.
- Suspend suspensions
- No authority to waive assessments
- Obligation to collect to fund operations
- Remember deadlines for recording liens!

Covenant/Rule/Arch. Standards Enforcement



Internal Enforcement by Association

- **Notices to Owners & Cease/Desist Letters**
 - Description of future consequences
 - Be specific about violation – best to cite the provision
- **Assessing rule violation charges**
 - Statutory: notice, opp. to cure, and opp. for hearing
 - \$50 per violation or \$10 per day for continuing
 - Authority to levy charges must be consistent with governing docs (*Shadowood* case)
- **Suspension of use rights** – same “due process” as above

Legal Action



- **Letter from counsel**
- **Lawsuit / Injunction**
 - Statutes & most docs provide for atty fees
 - Court order requires owner to comply (or allows Assn to do so) → contempt of court
- **Can be filed in General District Court or Circuit Court**
- **Lawsuit Considerations**
 - Costs & length of process
 - How certain courts view associations
 - Court may want to see Assn has tried everything else

Records



Member Access to Records

- **Statutory Provisions**

- Condo Act: §55.1-1945; POA Act §55.1-1815

- **Laws provide** that records available for “examination and copying”

- Owner must be in “good standing”

- Five *business* days’ written notice (for associations managed by CICM)

- Request must be specific as to records sought

- Review during reasonable bus. hours or mutually agreed time

- Request must articulate a “proper purpose” related to owner’s membership in Assn (no pecuniary gain)

Records That May Be Withheld

- **Assn may withhold records concerning:**
 1. **Personnel matters** relating to specific, identified persons or a person's medical records;
 2. **Contracts**, leases, and other transactions to purchase or provide goods or services, currently in or **under negotiation**;
 3. Pending or probable **litigation**;
 4. Matters involving state/local administrative or other **formal proceedings before govt tribunal for enforcement of Association documents** or rules and regulations;
 5. **Communications with legal counsel** that relate to above 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

...Records That May Be Withheld

- **Assn may withhold records concerning:**
 6. **Disclosure of information in violation of law;**
 7. Meeting minutes or other **confidential records of an executive session** of the board;
 8. Documentation, correspondence or management or board **reports compiled for** or on behalf of the Assn or board by its agents or committees for consideration in **executive session**; or
 9. **Individual owner or member files**, other than those of the requesting owner.

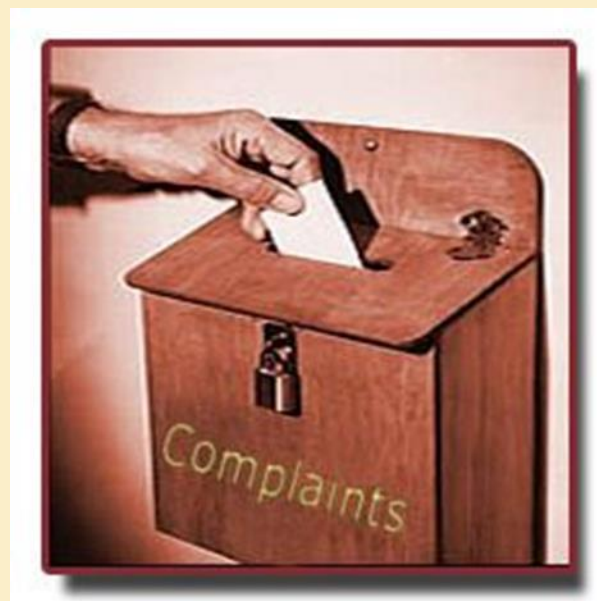
Maintenance Responsibilities



Maintenance

- **Primary task of Association – maintain common elements or common areas**
 - Specific duties set forth in recorded documents
 - Division of duties between owners and Assn not always clear, especially in condominiums
 - Condo Act default (55.1-1955): common elements = Assn; unit = unit owner
 - Check “Maintenance Responsibility Chart” for condo
- **Other Assn duties related to maintenance?**
 - Ensuring owners maintain their units or lots
 - Part of covenant enforcement
 - For condominiums, largely about hoarders and leakers
 - Stormwater management facilities?

CICB Complaints



CICB Complaints Process

- **Mandated by CICB Regulations**
- “Reasonable procedures” for the resolution of certain written complaints from the members of the association and “other citizens”
- All CICs must adopt a complaint procedure compliant with CICB regulations
- Procedure addresses written complaints concerning actions or inactions allegedly inconsistent with state laws and regulations applicable to common interest communities
- See <http://www.dpor.virginia.gov/CIC-Ombudsman/>

questions?

Thank you!