



THE QUARTERLY ASSESSMENT

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YOUR 2014 LEGISLATIVE UPDATE "TO-DO" LIST

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| <p>As a reminder, Chadwick, Washington, Moriarty, Elmore & Bunn P.C. has moved its Fairfax office as of January 2013. The firm's new address in Fairfax is:</p> <p style="text-align: center;">3201 Jermantown Road, Suite 600 Fairfax, VA 22030</p> <p>Our phone number remains the same: (703) 352-1900</p> <p>Please visit our website if you would like to learn more about this and other upcoming news and events: www.chadwickwashington.com</p> | <ul style="list-style-type: none"> ✓ Review your rule enforcement procedures to ensure they comply with the new statutory "opportunity to cure" requirement. ✓ Determine whether your association's governing documents are sufficient to allow the late fee amount to be changed to something higher than 5%. ✓ Review and update internal procedures to account for the longer timeframe to provide members with access to requested books and records. ✓ Review and update internal procedures, and check with your third-party resale packet vendor (if you use one), to ensure compliance with the changes in the resale disclosure requirements. <p>We hope this information helps prepares you for dealing with this year's batch of new laws affecting Virginia community associations. Of course, if you have any questions about these new laws and how they impact your association, please do not hesitate to contact us.</p> |
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now be a mandatory requirement to give the noncompliant owner an opportunity to cure the violation. Also, language was added that confirms previously-existing authority to file or defend lawsuits in circuit court and general district court for violations of the recorded covenants and rules.

Unfortunately, due to some political theater in the General Assembly (seemingly aimed at protecting those who violate the covenants rather than the overwhelming majority of homeowners who recognize the importance of covenants in maintaining property values), language was stricken from a bill that would have attempted to provide more clarity to the scope of association authority to assess violation charges.

Late Fees

In 2013, the Condominium Act and the POA Act were amended to specifically address the imposition of late fees. This year, that statutory late fee language was amended to clarify that, *unless the recorded covenants or rules adopted pursuant thereto provide otherwise*, boards of directors have the authority to levy late fees on assessments (or any installments thereof) not paid within 60 days of the due date, up to a maximum of the penalty for nonpayment of taxes specified in Va. Code Section 58.1-3819 (currently 5%). So, if your association changed its late fee last year to 5%, the board might be able to change the late fee back to the amount the association had been charging previously, depending on whether or how the association's recorded covenants and duly adopted rules address late fees.

Responding to Members' Requests to Inspect and Copy Records

For self-managed associations, this year's legislation increases from five (5) *calendar* days to ten (10) *business days* the timeframe to provide access to association books and records once requested in writing per the applicable statute. For associations managed by common interest com-

munity managers, this timeframe increases from five (5) *calendar* days to five (5) *business* days.

Merger of Condominiums

A new code section has been added to the Condominium Act (Section 55-79.71:2) that provides statutory authorization for two or more condominiums to merge into a single condominium. However, such a merger is not easy to achieve. At a minimum, a condominium merger will require each condominium association to obtain the approval of unit owners representing at least four-fifths of the total votes in that association. In addition, mortgage company approval may also be required, depending on the language in the condominium instruments.

Resale Certificates and Disclosure Packets

The resale disclosure requirements and procedures were again amended this year in both the Condominium Act and the POA Act. The amendments clarify that the choice of the method of delivery (hard copy or electronic, if offered) is at the option of the seller or seller's agent. In addition, a provision was added to state that if a prospective purchaser receives the resale packet by commercial overnight delivery or UPS, then the purchaser has three days after receipt to cancel the purchase contract (i.e., the same timeframe as when the purchaser receives it by hand or electronically).

This year's amendments also clarify that the statutory provisions do not authorize associations or community managers to charge a fee for inspecting a unit or lot except as specified in the resale certificate provisions of the statutes. In addition, for the one fee that can be charged for electronic delivery, the written request for a resale packet can require that the electronic copy be sent to any or all of the following five (rather than two) recipients: the seller, seller's agent, purchaser, purchaser's agent, and one other person designated by requestor. Also, the Condominium Act's resale certificate provision was amended to state that no additional fees are allowed for simply accessing the association or manager's website (a similar provision is already in the POA Act).



CHADWICK, WASHINGTON, MORIARTY, ELMORE & BUNN, P.C.

3201 JERMANTOWN ROAD, SUITE 600
FAIRFAX, VA 22030
(703) 352-1900
FAX (703) 352-5293

201 CONCOURSE BOULEVARD, SUITE 101
GLEN ALLEN, VA 23059
(804) 346-5400
FAX (804) 965-9919