



THE QUARTERLY ASSESSMENT

INSIDE THIS ISSUE:

Impacts of the Federal Fair Housing Act 1

Under Surveillance: Cameras in Community Associations 2

Slow Down! Tips for Managing Unsafe Driving in your Community 3

Updates from the Virginia Common Interest Community Ombudsman and Common Interest Community Board 4

CWMEB Firm News Announcements, and Happenings 5

For more updates throughout the year, and for more information about the CWMEB Seminar Series, firm happenings, and other news, please visit us on the web at:

www.chadwickwashington.com

IN GRATITUDE:

The Thanksgiving holiday is a time when many of us get together with friends and family to reflect, remember, and give thanks. It is also appropriate at this time of year that we, the attorneys, paralegals, and staff at Chadwick Washington take this opportunity to say "Thank You." To our clients who have entrusted us with their representation; to our colleagues with whom we have worked either on behalf of our mutual clients or on behalf of organizations like the Community Associations Institute; and to our friends, please know that all of us are grateful and appreciative of the opportunities afforded to us and the relationships created and developed over these many years. So to all of you from all of us, please know that this message conveys our warmest regards and our best wishes to you and yours for a very Happy Thanksgiving!

DON'T Just say No! Understanding the Impact of the Federal Fair Housing Act

By: Wil Washington, Esq.

Fair Housing claims are on the rise, and chances are that if your community association has not already encountered a request for a reasonable accommodation under local or federal fair housing laws, it likely will. In many cases involving community associations, violations of fair housing laws have occurred unintentionally and have resulted from the well-intentioned actions (or inaction) of the association's volunteer board of directors. A board's lack of knowledge about fair housing laws poses a danger to the association as these mistakes can result in very substantial financial awards against the association. Community associations whose managing agent and board of directors are educated about fair housing laws will be better able to navigate the often complex fair housing issues and help the association responsibly discharge its responsibilities in this area.

It is very important for all involved in the leadership, management and administration of a community association to understand fair housing laws and the potential risks associated with not responding appropriately to a request for accommodation. It is a recommended best practice to have a plan in place for handling requests from an individual who may have certain protected rights. It is also important for leadership to avoid conduct that may violate fair housing rights of residents in the communi-

Important Fair Housing Act Terms

The Fair Housing Act requires owners of housing facilities (including common interest community associations) to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities.

"Reasonable accommodation" – a change or exception to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

"Reasonable modification" – a structural change made to an existing premises, occupied or to be occupied by a person with a disability (including common areas) that may be necessary to afford a person with a disability the full enjoyment of the premises.

"Disability" - (or "handicap") with respect to an individual, is a physical or mental impairment that substantially limits one or more major life activities of such individual.

ty due to their disability, race, sex, national origin or familial status when enforcing covenants or allocating services.

The federal Fair Housing Act ("the Act") and similar local fair housing laws prohibit discrimination in housing, in part, on the basis of disability. The Act makes it unlawful for community associations to

(Continued on page 2)

(Continued from page 1)

refuse to make reasonable accommodations to its rules, policies, practices or services when such accommodations are reasonably necessary to afford a disabled resident an equal opportunity to use and enjoy the property. It is critical that managers and volunteer board members are able to sufficiently recognize when a particular request may fall under the purview of local and federal fair housing laws.

For example an area association found out the hard way that denying a request by a prospective purchaser for a handicapped parking space near the front entrance of the condominium constituted discrimination which cost the community over \$50,000. Similarly, another area association had to pay the attorney's fees of six handicapped owners when the association refused to provide them with reserved common area parking spaces near their homes. That cost them \$150,000. A high rise condominium in the area refused to bend its 80% carpeting requirement at the request of a handicapped owner in a wheel chair which cost them \$45,000. Even efforts to enforce your covenants or to collect unpaid assessments can run afoul of the fair housing laws. Taking away reserved parking from a delinquent owner is a good tool to collect assessments without legal action. However, if the delinquent owner is handicapped and taking their space away would create a burden on them due to their handicap, be prepared to accommodate their request to be exempt from your association's towing policy even if they haven't agreed to pay the outstanding debt. Failure to do so can cause your association to pay them damages far more than they owe the association.

If you have pet restrictions in your community, you should know that recently, requests for service animals and emotional support or companion animals are on the rise. Improper denial of these requests by handicapped residents can also lead to adverse findings that could be costly to your association.

As illustrated by the foregoing examples, it is important for your Association and Board to recognize a Fair Housing request for accommodation when presented with one. It is equally important to have a plan in place on how to respond to such a request. The following is a list of guidelines your Association should consider when evaluating a potential fair housing request:

- ◆ Don't just say no! When presented with a request for accommodation, the safer response would be "we'll look into it and we'll get back to you." A request may not immediately appear to trigger the Association's obligations under local or federal fair housing laws. Remember that these laws are broad in scope. Also, be mindful that an immediate denial could expose your Association to liability, even if it ultimately later fulfills the request.
- ◆ Remember that fair housing laws can trump your Association's governing documents. Even if the requested accommodation is outside the scope of the Board's authority under the governing documents, the Act may nonetheless require the Association to act.
- ◆ Be proactive. Board Members should take steps to familiarize themselves with fair housing laws and be prepared to diligently process a potential future request before it arrives.
- ◆ When in doubt, contact your Association's legal counsel. They can assist you in evaluating requests for accommodation, formulating appropriate responses and in providing further education about the Fair Housing Act.

Under Surveillance: Use of Cameras in Community Associations

By Sara J. Ross, Esq.

Your association has recently experienced an increase in unlawful or criminal activity within its borders. There has been vandalism at the pool; cars being broken into in the parking lots; and unauthorized dumping in the common areas. Faced with these concerns, your Board of Directors is considering using video surveillance cameras in order to assist in crime prevention and/or detection. Although there are liability concerns when undertaking any "security" measures, if done properly, surveillance cameras can be an effective tool for community associations.

Surveillance cameras (we do not call them security cameras as "security" implies protection) can be useful in deterring crime and in identifying those engaging in criminal or unlawful acts on association property. There are a number of considerations to take into account when deciding if and how to utilize surveillance cameras in the community:

- ◆ How are the cameras to be used: deterrence, identification, police assistance, etc?
- ◆ Where are the cameras to be located?



- ◆ How are the cameras to be set up: single stationary cameras, multiple cameras, cameras with tilt, pan and zoom capabilities?
- ◆ Recorded or live monitoring?
- ◆ Is additional lighting required?

(Continued on page 3)

(Continued from page 2)

◆ What signage is required?

It may be beneficial to the association to engage a security consultant to answer the above questions and to assist the Board in determining the best tools and methods. However, there are a few general rules to Boards should follow in making their surveillance camera decisions:

Rule 1: Establish a proper purpose for the cameras. The purpose for the surveillance cameras should be to improve the safety of the community and/or to assist the Board in performing its duties, or some other general business purpose that benefits the association. Any use of the cameras for personal gain, harassment, or non-business purposes can open the association to liability claims for the unlawful use of the cameras, and may trigger federal, state or local video surveillance laws.

Rule 2: Keep cameras pointed on the common area. If the cameras are pointed at the common area, and not pointed in an area where an individual has a reasonable expectation of privacy (e.g. bathroom, bedroom, locker room, etc.), then there should be no privacy concerns. There is no reasonable expectation of privacy on a tot lot.

Rule 3: Manage resident expectations. Associations get into trouble when they promise protection they do not provide. If the cameras are for recording only, then the residents should be made aware of that. If recordings are only being saved for a very short duration

(e.g. 72 hours), owners should be made aware of that, as well. Any signs (which are highly recommends) should indicate the actual type of surveillance being provided and not give the impression that there is live monitoring, when there is not. Rule 3A: NO DUMMY CAMERAS!

Rule 4: Maintain the equipment. The other way associations get into to trouble is when they either eliminate an established security measure, or fail to maintain it. If the Board or management is aware that a camera or the recording equipment is malfunctioning, the association must take prompt action to make the necessary repairs.

Rule 5: Adopt a policy regarding surveillance cameras. The policy should address the purpose of the cameras and the method of surveillance (i.e. live monitoring versus recordings). For recordings, there should be a retention policy that establishes how long a recording is maintained, and procedures for providing copies in the event of an incident, or owner request.

When it comes to security issues within a community association, Boards have to walk a fine line between performing their due diligence and creating an expectation that the association is providing security to its residents. In deciding whether to install surveillance cameras, it is important for Boards to weigh the costs and benefits, and to develop a solid plan for implementation. In addition, it is important to communicate with the members and residents that the cameras are not in place for their protection, and that they must be vigilant in taking steps to ensure their own safety.

Slow Down! Tips for Managing Unsafe Driving in your Community

By Susan L. Truskey, Esq.

Speed traps, traffic cameras and radar technology are common tools used by law enforcement to combat speeding; however, these are not practical solutions for community associations. Association boards of directors often receive complaints from concerned residents about unsafe driving in the community who look to the board for help. In an effort to assist community associations tackle this rising problem, many municipalities have developed programs and published handbooks on “traffic calming” – which, according to the Institute for Transportation Engineers, is the combination of non-physical and physical measures designed to alter driver behavior.

The authority of each association to implement various traffic calming measures will largely depend on whether the association’s streets are privately owned (i.e. are maintained by the association) or are public (i.e. dedicated for public use and maintenance). Although associations with private streets will enjoy greater latitude and a more streamlined decision making process, there are plenty of tools available for all types of associations to help address problems with residential traffic and speeding.

Developing a Plan:

Complaints about traffic are common within many associations, often becoming a topic of discussion during community forum at board meetings. Concerned residents look to their board to take prompt action against unsafe drivers without realizing that there may be limitations on the directors’ authority to respond to the issue. Prior to taking action, it is recommended that each association carefully study and fully understand the particular traffic issues it has experienced so as to develop an appropriate, informed response. Many boards have had success establishing committees devoted to traffic calming where members can contribute by performing necessary research and making rec-



(Continued on page 4)

(Continued from page 3)

ommendations to the board.

Traffic Calming Measures:

Many homeowners' associations with single family residences will find that their streets are publicly owned and maintained by the state. On one hand this is beneficial to the association as it is spared costly asphalt repairs and maintenance, not to mention unpredictable snow removal costs. But on the other hand, when the association does not own or control the streets, it must rely on assistance from the state and local government (both administrative and financial) to implement change. Associations with private streets, such as many condominium and townhome associations, are generally responsible for costs associated with road maintenance and would also bear the cost of any physical alteration, sign, or other traffic calming device purchased for use in the association.

The quickest and most affordable traffic calming measure for any community association is to raise awareness about this heightened safety concern. The effectiveness of such grassroots efforts may be supplemented by the installation of additional signage, as appropriate, throughout the community, including Children at Play signs or reduced speed limits. Associations with private streets will enjoy greater authority to regulate driver behavior within the association and may consider adopting rules and regulations regarding safe motor vehicle operation on association property, enforceable just as any other rule or covenant. If these measures fail, the asso-

ciation may need to consider installing physical traffic calming devices such as speed bumps, narrowed travel lanes, traffic circles and raised crosswalks. As always, it is important to confirm that any contemplated measure is within the association's scope of authority by consulting the governing documents before taking any such action.

Getting Started—Associations with Public Streets:

1. Check the governing documents; determine ownership and maintenance responsibility for the lanes.
2. Campaign to raise awareness in the community
3. Contact local county supervisor to request traffic calming plan.
4. Coordinated effort by stakeholders to develop plan.
5. Approval of plan by board of supervisors and VDOT; funded by state and/or local government.

Getting Started—Associations with Private Streets:

1. Check the condominium instruments or governing documents; determine ownership and maintenance responsibility for the lanes, and whether traffic calming plans are authorized and within any applicable spending limits.
2. Campaign to raise awareness among residents.
3. Board may adopt rules regarding safe driving in community; enforcement subject to association's enforcement authority
4. Install signage (e.g. Children at Play, speed limits, etc.).
5. Physical modifications of drive lanes (speed bumps, raised crosswalks, roundabouts, etc.).

Updates from the Virginia Common Interest Community Ombudsman and Virginia Common Interest Community Board

By Robert D. Brant

There have been some recent developments from the Virginia Office of the Common Interest Community Ombudsman (CICO) and Common Interest Community Board (CICB), of which homeowners, board members, and managers should all be aware.

Updated Disclosure Form

The Virginia CICB is the regulatory body responsible for licensing and regulating common interest community managers, as well as certain employees of licensed management firms. One of the CICB's responsibilities is to develop and disseminate a form that property owners' associations are required to include in resale disclosure packets under the Virginia Property Owners' Association Act. The form provides prospective purchasers with a summary of the unique characteristics of property owners' associations, and a general description of the rights, responsibilities and benefits that accompany ownership in a property owners' association.

In September 2013, the CICB published an updated version of its form. The updated form, available for review and download on the CICB's website at <http://www.dpor.virginia.gov/Boards/CIC-Board/>, is now required by the Property Owners' Association Act to be included in all resale disclosure packets. Managers and Board Members should confirm that the correct and updated form is included in all packets.

CICO Complaint Process Flowchart

The Office of the Common Interest Community Ombudsman offers assistance and information to association members regarding the rights and processes available to them through their associations. The CICO recently published a flow chart intended to help homeowners understand the CICO's mandatory association complaint process. The flowchart is available on the CICO's website at <http://www.dpor.virginia.gov/CIC-Ombudsman/>.



Firm Happenings

Awards:

Sara J. Ross has been elected as the newest shareholder of Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. Sara becomes the firm's eighth shareholder, effective January 1, 2014.

Ken Chadwick received the Washington Metropolitan Chapter of Community Associations Institute's Chapter Appreciation Award in recognition of his years of service as one of the Chapter's representatives in the Virginia Legislature.

Susan Truskey was awarded the 2013 Rising Star Award by WMCCAI for her work on the Chapter's Quorum Editorial Committee.

Michael Sottolano and **Jerry Wright** both received awards at the Central Virginia CAI Annual Awards Luncheon held on November 8, 2013. Michael received a Rising Star Award, and was elected to serve on the CVCAI Chapter's Board of Directors. Jerry received the President's Award, and was also recognized for his service as an outgoing Board member and former President of CVCAI.

The firm was recognized by the Southwest Virginia Chapter-in-Organization of CAI, which awarded the firm its Business Partner of the Year Award.

Upcoming Events:

Michael Sottolano and **Jerry Wright** will be presenters at the Central Virginia CAI Chapter's annual Community Associations Day Trade Show and Expo, to be held on March 18, 2014.

Recent Events:

Ken Chadwick served as a panelist at the 2013 Community Education Seminar held on November 4, 2013. The Seminar was sponsored by Fairfax County and covered legislative and regulatory updates for Virginia Community Associations.

Brendan Bunn co-presented an educational session entitled "Managing Strange, but True, Common Area Issues," at the November Manager Luncheon held by the Washington Metro Chapter of CAI.

Recent Publications:

Wil Washington published an article entitled "*Don't Just Say No: Understanding the Impact of the Fair Housing Act,*" in the November 2013 issue of *Quorum Magazine*.

Sara Ross published an article entitled "*Under Surveillance: Use of Cameras in Community Associations,*" in the September 2013 issue of *Quorum Magazine*.

Susan Truskey published an article entitled "*Slow Down! Tips for Managing Unsafe Driving in your Community,*" in the September 2013 issue of *Quorum Magazine*.



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