



THE QUARTERLY ASSESSMENT

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<p>WE HAVE MOVED!</p> <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>	<p style="text-align: center;">VIRGINIA ASSOCIATIONS’ LEGISLATIVE UPDATE “TO-DO” LIST</p> <p>As a result of the legislation that passed in the 2013 Virginia General Assembly, we suggest that property owners’ associations and condominium associations take the following initial steps before July 1st of this year:</p> <ol style="list-style-type: none"> 1. Update Resale Disclosure Forms: review your governing documents and files to determine whether there are any solar panel restrictions that must be disclosed, and to determine if there are any known secondary mortgage market agency approvals that must be disclosed (such as FHA condominium project approval). See Section 55-79.97 of the Condo Act and Section 55-509.5 of the POA Act. 2. Confirm Late Fee Authority: POAs and Condos should review their recorded declarations or condominium instruments (as well as rules adopted pursuant to those recorded documents) for late fee authority, and consult with legal counsel on whether the association is affected by this new statutory late fee provision. See Section 55-79.83 of the Condo Act and Section 55-513.2 of the POA Act. <p>Also, after July 1st, property owners’ associations and condominium associations should be mindful of the new notice requirements when holding a subsequent meeting to elect directors after cancelling an annual meeting. Also, associations should be on the lookout for notices (containing important new owner information) from mortgage company’s foreclosure trustees, which should be provided to associations within 60 days after a mortgage foreclosure sale takes place. </p>	

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tation, or prohibition on the right of a Lot/Unit owner to install or use solar energy collection devices on the Lot/Unit owner's property (House Bill 2305) and (ii) a statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies (House Bill 1807).

Late Fees

For those associations whose recorded instruments do not address late fees (or the ability of the Board to adopt late fees), the POA Act and the Condo Act were amended to provide express authority to impose late fees, but subject to certain statutory limitations. For example, unless a POA's declaration or a condominium's declaration or bylaws (or rules duly adopted pursuant to those recorded instruments) provide otherwise, the board of directors can impose a late fee for an assessment (or any installment thereof) that is not paid within 60 days of the due date. Also, the new law states that unless a POA's declaration or a condominium's declaration or bylaws provide otherwise, this late fee can be no more than the amount that localities can charge for unpaid taxes, which is currently five percent (5%). (House Bill 1595)

Home Businesses

Under this new statutory provision, property owners' associations ("POAs") will not have authority to prohibit home-based businesses, except to the extent their declarations provide otherwise. They will, however, still be able to (i) restrict the time, place and manner of the business operation, and (ii) restrict the size, place, duration and manner of the placement or display of any signs related to the business. The business use of an owner's property must also comply

with local ordinances. (House Bill 2200). Note that this new law does not apply to condominium associations.

Declarant Control Period

Effective March 20, 2013, declarants in condominiums have the opportunity to extend the declarant control period for that condominium to up to 15 years from the date the first unit was sold in any portion of the condominium or from the date units to which three-fourths of the undivided interests in the common elements were conveyed, whichever occurs first. The extension is subject to several conditions, including the calling of a special meeting of the association, approval by at least 2/3 of the non-declarant owners at the special meeting, and the election at the special meeting of a "warranty review committee" (comprised of at least three persons not affiliated with declarant). Also, the notice of the special meeting must include a disclosure on a form created by the Virginia Common Interest Community Board, which can be found at the following link:

http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/CIC/CIC_CONDO_DISCL.pdf

Once formed, the warranty review committee will have authority to investigate, assert and settle structural warranty defect claims against declarant; levy additional assessments to fund committee's operation in the event association funds are not enough; and notify the locality of committee formation within 30 days of formation.

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DC ENACTS NEW ENERGY BENCHMARKING REQUIREMENTS

Chris Chipman

On January 18, 2013, the D.C. Department of the Environment (DDOE) published new rules in the D.C. Register (60 DCR 367) requiring certain D.C. property owners – including condominium associations - to measure and report (or benchmark) their building's annual energy use. For those unfamiliar with the term, "energy benchmarking" refers to the process of tracking a particular building's energy and water usage to evaluate its overall efficiency compared to similar buildings nationwide.

The new rules required all buildings over one hundred thousand square feet (100,000 sq. ft.) to report initial benchmark statistics to the DDOE by April 1, 2013, while buildings over fifty thousand square feet (50,000 sq. ft) are required to report initial benchmark statistics to the DDOE by April 1, 2014. If you are unsure whether your association is required to comply with the new rules, the DDOE has published a list of covered buildings on its website:

<http://green.dc.gov/energybenchmarking>.

To initiate the benchmarking process, property owners must open Energy Start Portfolio Manager accounts with the U.S. Environmental Protection Agency and input their building's attributes (including, e.g., the unique building identifier as listed on the DDOE covered building list, gross floor area, and energy and water utility

information) into the Portfolio Manager to get their scores. Then, the property owner must submit a report to DC using its "District Report Template." Once the scores are calculated and reports submitted, the DDOE intends to publish each building's score on its website after the second year of reporting.

Following the initial report, building owners are required to file annual submissions with the DDOE by April 1 of each year. Failure to provide the requisite annual benchmarking statistics may subject property owners to fines of one hundred dollars (\$100.00) per day for each day that the information goes unreported.

The impetus behind the new regulations is to encourage energy-efficient upgrades in an effort to both reduce energy consumption and carbon emissions within the District. Moreover, the DDOE anticipates that public disclosure of energy performance data will bring transparency to energy consumption and create market pressure for more energy-efficient buildings.

If you need legal counsel to assist in determining whether or how to comply with DC's new energy benchmarking requirements, please contact us.



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Also, the association is required to provide sufficient funds reasonably necessary to fulfill the committee's obligations and to engage an architect, engineer, counsel or any other experts; investigate whether a breach of warranty exists; and assert and settle claims against the declarant. Unaffected by this new legislation is the requirement that an association must, more than six months before filing suit, provide the declarant with written notice of the defects and an opportunity to cure them. However, the deadline for filing suit was revised to account for the formation of a warranty review committee – specifically, a lawsuit for breach of warranty against structural defects must be filed against a developer within (i) five years from the date the warranty period began, or (ii) one year after the committee's formation, whichever occurs last. These 2013 statutory amendments also require that, within 45 days of creation of a warranty review committee, the declarant must deliver to the chair of the committee the following: (i) a copy of the latest available approved plans and specifications for all improvements in the project; (ii) all association insurance policies currently in force; (iii) any written unexpired contractor, subcontractor, manufacturer or supplier warranties applicable to the condominium, and (iv) a list of manufacturers of paints, roofing materials and similar materials. (House Bill 2275 – This Bill contained an “emergency” clause allowing it to become effective upon its passage, which occurred on March 20, 2013).

Notice of Mortgage Foreclosures

In the event of a deed of trust sale of a lot or unit in a common interest community (i.e., POAs, Condos and Co-ops), the mortgage company's foreclosure trustee must provide the common interest community with notice of the sale within 60 days after the sale. The notice must include: the property address, the owners under the deed of trust, the name and contact information of the notice provider, and the name and address of the new owner. (House Bill 1861).

Notice of Meetings During which Directors are Elected

The POA Act and the Condo Act were both amended to provide that if there is a cancellation of an annual meeting where directors are (or were to be) elected, notice of the subsequently called meeting must state that the meeting purpose is for the election of directors. (House Bill 1711).

Automated External Defibrillators (AED's)

The existing statutory liability protections related to AEDs was amended to provide that any person who maintains AED's on property owned or controlled by such person is immune from civil liability for any personal injury that results from any act or omission in the use in an emergency of an AED located on such property, unless the injury results from gross negligence or willful or wanton misconduct of the person who maintains the AED or his agent or employee. (House Bill 1988).

Stormwater Facilities (Local vs. State Regulation)

The primary effect of this legislation is on future communities. It was a result of an effort to allow development of stormwater facilities to meet only minimum State requirements. The legislation, in its initial form, prohibited localities from requiring more stringent standards of BMP facilities during development. In the end, the language of the legislation that was enacted allows localities to regulate stormwater facilities based upon several factors, including long-term costs and liability considerations. (House Bill 2190).

We hope this information prepares you in 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.



REMINDER: ADA POOL COMPLIANCE

Bruce Easmunt

Pool season is upon us. As we stated in our May 2012 *Special Assessment* newsletter, in May of 2012 the Department of Justice announced an extension for existing swimming pools to comply with the 2010 Americans with Disabilities Act (“ADA”) Standards for Accessible Design. As a reminder, the deadline for existing pools to comply was extended to January 31, 2013.

We addressed how these standards may affect those common interest communities with pools in our firm's Spring 2012 *Quarterly Assessment* newsletter, as well as in seminars conducted by our firm. As a reminder, these standards only apply to pools that would be considered “places of public accommodation” under the ADA.

If these standards apply to your association's pool and your pool is not yet in compliance, the technical manual released by the Department of Justice on May 24, 2012 may provide helpful information. The manual can be found at:

http://www.ada.gov/pools_2010.htm

If you have any questions concerning the applicability of the ADA and the 2010 Accessible Design Standards to your association, please do not hesitate to contact us.



IS YOUR CONDOMINIUM FHA CERTIFIED?

Bruce Easmunt

As you may be aware, the US Department of Housing and Urban Development has made temporary adjustments to its condominium standards in response to market conditions. If your condominium is not yet FHA-certified, now is a great time to obtain FHA certification.

There are significant benefits of being an FHA-certified condominium - A large portion of today's purchaser's finance their homes through FHA financing. Obtaining FHA certification enlarges the pool of prospective buyers of units within a condominium. This can, in turn, create competition for units and ultimately increase potential property values within the condominium.

Our firm has successfully submitted recertification applications and obtained recertification approval on behalf of our clients. We would gladly work with your association to secure FHA recertification of your condominium.

Please contact us if you would like assistance in submitting an FHA recertification application, or if you have questions concerning the application process.



FIRM HAPPENINGS

Over 120 homeowners and business partners attended the firm's seminar in Fairfax on March 7th, where **Ken Chadwick, Will Washington, Steve Moriarty, Brendan Bunn, Allen Warren, Sara Ross** and **Marie Johnson** spoke on a variety of topics.

On May 15, 2013 at the Koger Center in Midlothian, Virginia, 125 attendees enjoyed the firm seminar with presentations by: **Ken Chadwick, Andrew Elmore, Brendan Bunn, Jerry Wright and Michael Sottolano.**

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. is pleased to welcome its newest associate, **Robert "Bob" Brant** to the firm.

Brendan Bunn appeared on Fairfax County Government's live call-in TV program "Your Community, Your Call" on March 12, 2013 at 7 p.m. Brendan appeared to discuss the best practices for association meetings. Replays are of the show are available on the Fairfax County website.

Andrew Elmore and **Jerry Wright** each made presentations at the Central Virginia CAI "CA Day" on March 13, 2013.

Sara Ross, Bruce Easmunt, Brendan Bunn and **Allen Warren** each presented seminars at the Annual Conference and Expo for the Washington Metro Chapter of CAI, held on March 23, 2013.

Steve Moriarty was elected President of the newly formed Southwest Virginia Chapter of Community Associations Institute (CAI). **Bruce Easmunt** was appointed as the Chairman of the chapter's membership committee. The Southwest Virginia Chapter is headquartered in Roanoke and serves all of southwest Virginia.

Sara Ross's article "There's Got To Be a Morning After: Picking Up the Pieces After a Board Coup" was published in the March issue of WMCCAI's *Quorum*.

Brendan Bunn and **Sara Ross** are scheduled to teach an all-day "Essentials of Volunteerism" seminar on behalf of Habitat for Humanity on Saturday, April 13, 2013

Allen Warren will be co-presenting an educational session on amending governing documents at the CVCCAI/WMCCAI Virginia Leadership Retreat on July 27, 2013.

On June 1, 2013, **Jerry Wright** will be a teacher for CAI's "The Essentials of Community Association Volunteer Leadership", a one-day workshop for association leaders and homeowners.



2013 LEGAL SEMINAR SERIES

The Chadwick, Washington, Moriarty, Elmore & Bunn 2013 Legal Seminar Series is in full swing. Legal seminars in Virginia and D.C. are complimentary for all clients of Chadwick, Washington, Moriarty, Elmore & Bunn P.C. and guests of the firm.

These informative presentations include updates on legislation and cases that affect community associations, as well as a variety of topics, such as covenants enforcement, collections law and best community association practices. Our seminars are typically approved by CAI for continuing education credits.

We will provide a complimentary copy of our annual CWMEB Statute Book at all seminars.

Attendees can register by visiting our website at www.chadwickwashington.com and clicking "Seminars"

Each session will include a Virginia legislative update. Many sessions will have a "Grab Bag" of abbreviated topics and a case law update.

The remaining seminar dates and locations are set forth below:

May 30 - Williamsburg - Saude Creek Vineyard

June 6 - Roanoke - Hotel Roanoke

June 12 - Prince William - Heritage Hunt

September 5 - Fredericksburg - Expo Center

September 16 - Reston - Reston Association Offices

September 19 - Charlottesville - Omni Charlottesville

October 5 - Fairfax - CWMEB Conference Center

Seminars will be scheduled for the District of Columbia.

We hope to see you there!



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