



THE QUARTERLY ASSESSMENT

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Ten Commandments of a Director

- I. Be consistent in all thy dealings.
- II. Be faithful in attendance at board meetings.
- III. Allow the professional manager to manage.
- IV. Insist that professional management be responsible to the board of directors.
- V. Keep a watchful eye on the financial reports.
- VI. Communicate with your fellow board members and homeowners.
- VII. Deal honestly with all thy fellows.
- VIII. Resist using thy position for personal gain.
- IX. Remember that you are a board member of a business.
- X. Encourage the association to be members of CAI.

-Terrence P. Crawford, 1981

UNDERSTANDING THE CHANGES OF HOUSE BILL 516

By Bruce Easmunt

By now, most of our clients are aware of the recently enacted changes to Virginia law resulting from Virginia House Bill 516 ("HB 516"). Because the amount of information regarding these changes can be understandably overwhelming, we have created this article to set forth a clearer summary of the changes and how they may affect your association.

Common Interest Community Board ("CICB")

The CICB was created to administer the affairs of common interest communities and to establish and enforce regulations concerning both condominium unit owner associations and homeowners associations. As of the date of this newsletter, the CICB regulations have not yet been published, although the CICB members have been appointed. A list of the CICB members names can be found on page 3 of this newsletter. In furtherance of its enforcement power, the CICB has the authority to:

- Assess individuals up to \$1,000.00 for violations under the new law;
- Issue cease and desist orders to an association's board if it determines that the board has violated any statute or regulation which governs the association; and
- Seek court orders and injunctions against any community manager it has reasonable cause to believe is unable to properly discharge its fiduciary responsibilities to the association.

New Insurance Requirements for Associations

HB 516 increases the mandatory minimum coverage of an association's fidelity bond to the greater of \$10,000.00 or the association's reserve balances plus one-fourth of its annual assessment, not to exceed \$1 million dollars.

Increase in Annual Fees

For all associations, the annual report fee will now be remitted to the CICB as opposed to the Virginia Real Estate Board. The annual fee is owed in addition to an annual assessment, which must be paid by the association in an amount equal to the lesser of \$1,000.00 or 0.02 percent of the association's gross assessment income in the preceding fiscal year.

Establishment of Formal Complaint Procedures

The CICB will establish regulations which require associations to provide formal procedures for the resolution of written complaints from both association members and other citizens. Under these regulations, associations must maintain records of written complaints for one year from the date the association acts on the complaint. However, as stated above, these regulations have not yet been set forth by the CICB. Until regulations are adopted, our firm has drafted an interim complaint procedure that we believe meets the current standards set forth in the new law. Please contact us if your association may be interested in adopting an interim complaint procedure resolution. A sample complaint form can be found on page 9.

UNDERSTANDING THE CHANGES OF HOUSE BILL 516

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Newly Created Office of the Ombudsman

HB 516 establishes the Office of the Common Interest Community Ombudsman (the "Ombudsman"). The Ombudsman has the authority to:

- Assist community association members in understanding their rights and obligations under their respective association governing documents;
- Answer any questions or attempt to resolve any complaints association members may have regarding their specific association;
- Provide association members with non-binding interpretations of law and regulations;
- Require an association to provide the Ombudsman with a copy of the association's governing documents and other records for review; and
- Establish rules and regulations in furtherance of these goals.

New Resale Disclosure Provisions

As of July 1, 2008, each association must now include the following information in its condominium unit owners association resale certificates or homeowners association disclosure packets (collectively, "Resale Disclosures"):

- A statement of any post-closing fees charged to the new owner by the association's managing agent;
- A copy of any approved minutes of board meetings or meetings of the association for the 6 calendar months preceding the request; and
- A statement setting forth any improvements or alterations to a lot or unit that are or are not in violation of the association's governing documents.

Changes to Allowable Fees for Resale Disclosures

The allowable charges for the preparation of Resale Disclosures for both condominium associations and professionally managed homeowner associations must now be paid at the time of settlement. These types of associations can no longer require payment up-front prior to releasing the Resale Disclosure to the requesting party.

The allowable fees for these types of associations are now as follows:

- An inspection fee of up to \$100.00;
- A fee for preparing and delivering up to two paper copies of a resale disclosure, up to \$150.00, or up to \$125.00 for no more than two electronic copies;
- A rush fee of up to \$50.00;
- A post closing fee of up to \$50.00 to update association records as to the new owner.

Further, within twelve (12) months of the delivery of the initial Resale Disclosure, the seller, seller's agent, or a settlement company may request an update to the Resale Disclosure.

The allowable fees for this update are as follows:

- Up to \$50.00 for a financial update; and
- Up to \$100.00 for an updated inspection.

Failure to deliver a requested Resale Disclosure can make the preparer of such disclosure liable for an amount not to exceed \$1,000.00.

The Ombudsman's contact information is as follows:

Heather Gillespie, Esquire

Virginia Department of
Professional and
Occupational Regulation

9960 Mayland Drive
Suite 400
Richmond, Virginia 23233

(804) 367-2941

cicliaison@dpor.virginia.gov

UNDERSTANDING THE CHANGES OF HOUSE BILL 516

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Disclosure Packet Exceptions for Non-Professionally Managed Homeowners Associations

Unlike changes to the Virginia Condominium Act, changes to the Virginia Property Association Act have attempted to carve out a distinction between professionally managed and non-professionally managed homeowners associations. Under the new law, non-professionally managed homeowners associations allegedly:

- may continue to require that payment be made up-front for resale disclosure packets;
- may charge up to a total of only \$100.00 for actual costs incurred in preparing and delivering the disclosure packet; and
- may charge up to \$50.00 for a financial update.

Drafting inconsistencies in the statute make it unclear whether managed and non-managed associations have the right to elect either option. Nevertheless, A rush fee may no longer be charged; however, there is no longer a requirement to provide a disclosure packet on a rush basis if requested. Failure of a non-professionally managed homeowner association to deliver a requested disclosure packet can make the preparer of such disclosure packet liable for an amount not to exceed \$500.00.

Management Agent Licensing and Certification

As of January 1, 2009, all professional management companies must be licensed with the CICB, although upon submitting an application to the CICB by January 1, 2009, a professional management company may be granted a provisional license which is valid from December 31, 2009 to July 1, 2011. Further, each employee who is providing managing services on the "front lines" for a professional management company must be certified by the CICB no later than July 1, 2011. Thus, a person or entity who holds themselves out as a professional management company and performs management services must be licensed and its "front line" management employees must be certified by the CICB. The above licensing and certification requirements do not apply to community association employees or association board members.

New Management Agent Requirements

In order to obtain a license from the CICB, a common interest community manager must obtain and carry a blanket fidelity bond or employee dishonesty insurance policy, which not only insures the community manager from loss, but insures all clients of such manager as well. Further, community managers must also establish a code of conduct for its employees, ensure that all agreements with their clients are executed in writing, establish internal controls to prevent the risk of fraud, and ensure that their records are independently reviewed or audited on an annual basis. These requirements are designed to better protect the financial interests of professionally managed associations.

We hope that this summary provides a clearer understanding of the new changes established by the enactment of House Bill 516. Please do not hesitate to contact our firm with any questions you may have regarding this material.

*Current Members of
the Common Interest
Community Board:*

**Mr. Frederick James
Ahlberg**

Ms. Pamela S. Coerse

Ms. Ronda Desplinter

Ms. Kimberly B. Kacani

Mr. Douglas M. Kleine

Mr. Milton Matthews

Mr. R. Lee Merritt

Mr. Glenn H. Silver

Mr. Scott E. Sterling

**Ms. Lucia Anna
Trigiani**

**Ms. Katherine E.
Waddell**

TOP TEN PRACTICAL POINTERS FOR COMPLYING WITH THE CHANGES OF HOUSE BILL 516

By Ken Chadwick

The following is a list of ten practical pointers that will assist your association in complying with the newly established changes to Virginia law enacted by House Bill 516:

1. Establish a Formal Association Internal Complaint Procedure for Handling Homeowner Grievances, Complete With a Complaint Form;
2. Maintain Records of Complaints Received and Results of Hearing for at least One (1) year;
3. Notify Complainant of Right to Give "Notice of Adverse Decision" to the Common Interest Community Association Board;
4. Resale Certificate/Disclosure Packet Disclosures:
 - a) Notice of Any "Post-Closing Fees" charged by the Association or its Manager;
 - b) Copies of Approved Minutes Reflecting the Actions of the Board during the six (6) month period immediately preceding the request for the Certificate or Packet;
5. Adopt and Publish A List of Resale Certificate/Disclosure Packet Charges and Related Expenses;
6. For Associations Managed by a Common Interest Community Manager, be sure to Track Settlement Dates and Issuance Dates of Resale Certificates and Disclosure Packets for Fee Collection Purposes;
7. Date and Sign Resale Certificates and Disclosure Packets and Keep Copies of Those Issued;
8. Remember the Updates: a) Certificate/Package; b) Inspection; c) Settlement Agent Financial Update;
9. Budget Considerations:
 - a) Increase in Annual Registration Fees;
 - b) Potential increase in Fidelity Bond Costs;
 - c) If Managed, Revolving Fund for Payment of Certificate/Disclosure Costs;
 - d) Increase in Management Contract Fees.
10. Compile a Good Complete and Up-To-Date Set of Condominium Instruments/Governing Documents.

Please contact us if your association may be interested in establishing an interim complaint procedure resolution. A sample complaint form can be found on page 9 of this newsletter.

IS YOUR ASSOCIATION'S POOL IN COMPLIANCE?

By Kristin West

The 2008 summer pool season may be over but it is not too early to begin planning for next year. In fact, recent legislation passed by the United States Congress will impact *all* public swimming pools, wading pools, spas, whirlpools and hot tubs in the United States, including those found in community associations, beginning in December 2008. For community associations with indoor or heated swimming pools, spas, whirlpools or hot tub the compliance deadline is just around the corner – read on for important information.

Hidden Dangers in the Water

In 2005, of all children 1 to 4 years old who died, almost 30% died from drowning. See *Note 1*. Contributing to some of those deaths were a little known danger caused by filter intake drains in pools and spas. When covered, filter intake drains can exert incredible pressure and horrific injuries ranging from drowning to evisceration have been reported. From 1997-2007, there were 74 reported incidents associated with suction entrapment, including 9 deaths and 63 injuries. See *Note 2*. Sadly, Virginia Graeme Baker, granddaughter of former Secretary of State James Baker, III, died in a spa after the powerful suction of a drain entrapped her under water.

The Virginia Graeme Baker Pool and Spa Safety Act

In response to Virginia Graeme Baker's death and several other high-profile pool accidents involving children, on December 19, 2007, the President signed into law the *Virginia Graeme Baker Pool and Spa Safety Act* ("Act") as part of a larger energy bill which attempts to increase the safety of pools and spas. The Act addresses the hidden dangers posed by filter intake drains in pools and spas by imposing mandatory federal requirements for suction entrapment avoidance and by establishing a voluntary grant program for states with laws that meet certain minimum requirements as outlined in the Act.

The Act is being administered by the United States Consumer Product Safety Commission ("CPSC") and requires that on or after December 19, 2008, *all* public pools and spas in the United States take affirmative steps to mitigate intake-entrapment issues. The penalty for non-compliance has not yet been determined by the CPSC. See *Note 3*.

Mandatory Federal Requirements - Applicable to All Public Pools in the U.S. by December 2008

- **Safety Drain Covers.** All public pools, spas, whirlpools or hot tubs must be equipped with anti-entrapment devices or other systems that comply with requirements of the American National Standards Institute ("ANSI") A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs published by the American Society of Mechanical Engineers ("ASME"). Compliance will be enforced by the CPSC. See *Note 4*.

Effective December 19, 2008, all public pools and spas in the United States must take affirmative steps to mitigate intake-entrapment issues.

IS YOUR ASSOCIATION'S POOL IN COMPLIANCE?

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- **Public Pool Drain Systems.** All public pools, spas, whirlpools and hot tubs, both new and existing, with a single main drain (other than an unblockable drain) must be equipped with one or more of the following devices or systems:
 - A safety vacuum release system (SVRS) that engages when a blockage is detected and complies with ANSI/ASME requirements; or
 - A suction-limiting vent system; or
 - A gravity-drainage system; or
 - An automatic pump shut-off; or
 - A drain-disablement system; or
 - Other equivalent systems determined by the CPSC to reduce the risk of entrapment.

- **Public Pool Drain Covers.** Each public pool, spa, whirlpool and hot tub, both new and existing, must be equipped with drain covers conforming to the ASME/ANSI A112.19.8-2007 Standard described above. See Note 5.

Compliance Guidelines

CPSC staff urges all public pool, spa, whirlpool and hot tub owners to carefully review the CPSC's guidance document that spells out the technical requirements of the Act in order to comply with the Act prior to December 19, 2008. Contact CPSC at info@cpsc.gov or 301-504-7908.

For additional more information please also visit the Association of Pool & Spa Professionals at www.theapsp.org.

Note 1 - Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS) (www.cdc.gov/ncipc/wisqars);

Note 2- The Association of Pool & Spa Professionals, Virginia Graeme Baker Pool and Spa Safety Act, June 18, 2008 Staff Interpretation of Section 1404: "Federal Swimming Pool and Spa Drain Cover Standard" (http://www.apsp.org/clientresources/documents/_/CPSPStaffInterpretation.pdf);

Note 3- The Association of Pool & Spa Professionals, Frequently Asked Questions About the Federal Pool & Spa Safety Act (http://www.apsp.org/clientresources/documents/FAQs_pool_spa_safety_act-July2008.pdf);

Note 4 - The Association of Pool & Spa Professionals, Summary Analysis of the Virginia Graeme Baker Pool and Spa Safety Act (<http://www.apsp.org>); and

Note 5 - The Association of Pool & Spa Professionals, Summary Analysis of the Virginia Graeme Baker Pool and Spa Safety Act (<http://www.apsp.org>).

WHAT'S IN A NAME? ESTABLISHING AND PROTECTING YOUR ASSOCIATION'S ONLINE PRESENCE

What's in a name? Community associations asking that question today are likely to be thinking about their association's online presence. An online presence has the potential for confusion, litigation, and liability. That's why it is essential for a community association to protect its name and control its use.

When a community association, or any other entity, creates a web site, it also adopts a "domain name" attached to an Internet address. To prevent confusion and prevent others from using the same name and address, associations should register their name and address with ICANN (the Internet Association for Assigned Names and Numbers), a non-profit organization that oversees the allocation of domain names and arbitrates disputes over their use. By registering their domain name (at a cost of approximately \$8 per name), associations prevent other entities from establishing a Web page at an address that should belong logically to the association. But it is important to register through a reputable ICANN Registrar, so the name is actually owned by the association and not by the company that registers the name on the association's behalf.

Some companies register multiple names – their domain name plus numerous similar spellings of it – so that visitors who spell the name incorrectly or mistype it will still end up on the company's site. This makes sense, because businesses don't want to risk losing any prospective customers. Community associations may not have the same concern or the same need to register several variations of their name. Happy Haven Condominiums.com – might want to register Happy Haven Condominiums.org and Happy Haven Condominiums.net with ICANN, but going beyond that probably isn't necessary for most communities.

Registering a Trademark

Their domain name isn't the only name about which associations should be concerned; protecting a trademark name may be equally important. Unhappy homeowners will sometimes use the community association's name (attached to a different web address) to post disparaging comments about the management company, the board, other owners, or all of the above. Registering the trade name won't prevent the disparaging comments, but it may prevent the appearance that the association is either making or condoning them. Similarly, developers or management companies have been known to use the name of a well-known condominium community to market their services or to sell time shares, implying a connection or an endorsement that does not exist.

Registering the community's name as a trademark can prevent such abuses. Even without formal registration, your community's name may have trademark protection under common law, if the name is unique and if your community association was the first entity to use it. For example, if a company calls itself "Majestic Mirror Enterprises," you probably would not be able to obtain trademark protection for "Majestic Mirror Community Association." You also cannot normally protect names that are in the public domain, such as Diamond Head, Grand Canyon, or White House. On the other hand, you might be able to piece together several words, some of which are in the public domain, to create a valid trade name – Grand White Diamond Condominium, for example.

It is essential for a community association to protect its name and control its use.

WHAT'S IN A NAME? ESTABLISHING AND PROTECTING YOUR ASSOCIATION'S ONLINE PRESENCE

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The advantage of actually registering a trade name with the state is that you create a searchable public record, putting others on notice that the name is reserved. Other entities contemplating the same name could learn from a search of the public record that the name was not available, and pointing to the registry should be enough to persuade someone who has begun using the name not to do so. If you claim common law protection for your name, on the other hand, you would probably have to file suit or seek arbitration to assert your rights; simply insisting that the name is yours is unlikely to be enough.

Some states will automatically protect the name under which a business incorporates, an option that is available to community associations as well. Like trademark registration, incorporation creates a public record of names that are off limits to others. Of course, this system works only if people actually search the record before selecting a name, which isn't always the case.

Controlling the Message

Although this article has so far addressed ways to protect a community association's name, it is equally important to control the information associated with the community's name – especially the information posted on the association's web site. This suggests the need for several precautions, primary among them:

- Ensure the individual or individuals charged with updating the site are responsible and reliable and have no hidden agendas, such as a desire to criticize or embarrass the board or other members of the community.
- Establish a process for screening online content. At least one member of the board should review and approve all material before it is posted.
- Formulate clear editorial guidelines specifying what is and is not allowed on the site. Do not publish the names of delinquent owners and exclude information about pending or potential litigation, personnel matters, and anything else the board might discuss in executive session.
- Create a portion of the site restricted to residents only, requiring a user name and a password for access. General information about the community and its amenities can be a useful marketing tool, but budget information, the minutes of board meetings, and the names and addresses of residents should not be available to the general public.
- Include a disclaimer on the public portion of the site stating that the association does not guarantee the accuracy of the information posted there and cautioning visitors to rely on original documents only. This precaution is designed to prevent buyers who purchase homes in the community from claiming later that they relied on online information that turned out to be exaggerated or erroneous, and filing a claim against the association for damages they claim to have suffered as a result.

It is equally important to control the information associated with the community's name – especially the information posted on the association's web site.

SAMPLE COMPLAINT FORM FOR THE RESOLUTION OF WRITTEN COMPLAINTS FROM ASSOCIATION MEMBERS AND OTHER CITIZENS

[Common Interest Community Association Name]
[Association or Managing Agent Address and Telephone Number]

COMPLAINT FORM

Pursuant to Section 55-530(E) of the Code of Virginia, 1950, as amended, the Board of Directors ("Board") of the _____ (the "Association") has established this complaint form for use by persons who wish to register written complaints with the Association.

Legibly describe your complaint in the area provided below. Please include references to the specific facts and circumstances at issue and the provisions of the Association's documents or governing law that support your complaint. If there is insufficient space, please attach a separate sheet of paper to this complaint form. Also attach any supporting documents relevant to your complaint.

Four horizontal lines for writing the complaint.

If, after the Board's consideration and review of your complaint, the Board issues a final decision adverse to your complaint, please be aware that you have the right to give notice to the Common Interest Community Board ("CICB") of any final adverse decision in accordance with the regulations promulgated by the CICB. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the CICB, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25.00 filing fee. The CICB's contact information is:

Office of the Common Interest Community Ombudsman
c/o Heather Gillespie, Esquire
Virginia Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233
(804) 367-2941
cicliaison@dpor.virginia.gov

Sign, date and print your name and address below and submit this completed form to the Association at the address listed above.

COMPLAINANT:

[Printed Name] [Signature] [Date]

[Address]