



The Special Assessment May 2022 Edition

Fairfax County Cracking Down on Running Bamboo: Potential Fines on Landowners

By Michelle A. Wahab



Fairfax County recently amended the County Code to help it clamp down on property owners who allow uncontrolled bamboo overgrowth to spread from their property to others by implementing fines against such owners. The new penalties go into effect on January 1, 2023 and property owners could face fines of \$50 (and up to \$200) per day if they fail to contain the running bamboo on their property. Also, it is important to note that under this amended Code provision, an “owner” not only includes homeowners’ associations that own common area land, but also includes condominium associations with common element land to maintain and associations that are responsible for maintaining an easement area on someone else’s property. Here is what associations, especially those with bamboo growing on or near their common areas, need to know before the change to the Code takes effect:

1. Only “running bamboo” is subject to fines.

While owning and planting bamboo in Virginia is not illegal, and bamboo can seem like an aesthetically pleasing and simple privacy barrier for the edges of properties, it is an invasive species of which certain varietals grow *fast* if left uncontrolled. Plant the wrong kind of bamboo and before long your yard (and possibly neighboring properties) will be filled with bamboo stalks. The change to the Fairfax County Code specifically applies to and penalizes failure to contain the growth of “running bamboo,” meaning any species that is characterized by “aggressive spreading behavior,” and includes bamboo from the genus *Phyllostachys*. In that Virginia still allows running bamboo to be sold, if interested in planting bamboo, make sure to specifically ask for “clumping bamboo”, which grows more slowly, is noninvasive, and would not subject a property owner to penalties under the ordinance.

2. Property owners can be penalized even if they did not plant the bamboo.

It makes sense that landowners who plant running bamboo and allow it to spread unchecked to other properties could be penalized for failing to contain the growth, but the change to the County Code also places responsibility on owners who merely *permit* bamboo to spread from their property as well, even if they were not the ones who initially planted it. For example, if bamboo spreads from an owner's property onto the association's common area, the association is required under the County Code to take active steps to control the spread from the common area to other properties, such as by diligently pursuing its removal – including through legal action, if necessary. Failing to take such action could subject the property owner to County-imposed fines. Note that this also applies to owners who purchase properties where bamboo is already growing; such owners could potentially face fines as a result of the actions of the prior owners if bamboo growth from the property is not adequately controlled or neutralized.

3. The Penalty Process

The Department of Code Compliance (“DCC”) for Fairfax County is tasked with investigating complaints regarding the running bamboo prohibition and issuing fines and penalties. The DCC would first give property owners the opportunity – thirty (30) days – to remove or contain any unlawful bamboo coming from their property before proceeding with penalties. Should owners fail to take any remedial action, then the DCC could issue fines according to the following schedule:

- a. \$50.00 per business day for the first violation;
- b. \$200.00 per business day for subsequent violations within 12 months of the first violation; and
- c. Penalties max out at \$2,000.00 per 12-month period, *per incident*.

In regard to the maximum penalty, note that if there are multiple instances of running bamboo violations coming from a property, that each incident could be the subject of a separate fine, with each incident in a 12-month period posing the potential, if not corrected, for a maximum in \$2,000.00 of monetary penalties.

Property owners may appeal the violation notice issued by the DCC to the County Executive within ten (10) days of delivery of the violation notice of violation or challenge the penalty in the Fairfax County General District Court.

Important Take Aways: We urge associations in Fairfax County that own or maintain land to evaluate the bamboo currently on their properties to ensure that any running bamboo is not spreading outside the boundaries of the common areas, common elements or easement areas, as applicable. Should you notice any aggressively spreading bamboo, consider building deep barriers or trenches around the bamboo to contain it as much as possible and consult with a horticulturist to determine what additional steps may be necessary to control and contain the spread or eradicate bamboo growth on or from the property. Also be cognizant of the fact that, under the amended Code, it does not matter whether the association, as the owner of the property, initially planted the bamboo. Property owners who do not take active steps to control the spread of running bamboo from their property onto neighboring properties run the risk of incurring fines levied by Fairfax County. Associations should also consider whether their governing documents currently (or should) prohibit owners from planting or allowing the spread of “running bamboo” on their own lots.

Chadwick Washington Zoom Webinar Series

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C., is pleased to host and invites you to attend one or more of its educational Webinar Series for 2022 highlighting topics relating to community association law and governance. Each Webinar is one hour, with two topics presented by CWMEB attorneys followed by Q&A Sessions in separate Zoom breakout rooms staffed by CWMEB attorneys. The waiting room for the Webinars will open about 15 minutes before the sessions begin at 7:00 p.m., with the Q&A Breakout Rooms opening at approximately 7:40 p.m.

Topics this season will include Amending Governing Documents; EV Charging Stations and Solar Panels; Understanding the Fiduciary Duty; Association Insurance Coverages; Emotional Support Animals; Drafting Rules and Regulations; Key Provisions in Vendor Contracts; a Virginia legislative update (June sessions); and many more.

The firm's next educational Zoom Webinar will be held **Monday, May 23, 2022, at 7:00 p.m.** and will cover **Drafting Rules & Guidelines** and **Key Provisions in Vendor Contracts**.

We look forward to seeing all of our clients and guests during our 2022 Webinar Series and encourage you to register early for those topics and presentations you don't want to miss. The schedule listing the dates, times and topics for the 2022 Webinar Series is posted [here](#). Clients, managers and guests can also register for the Webinar(s) of choice directly [here](#). Additionally, more information can be found on the Seminar Series page of our website at www.chadwickwashington.com.

Firm Happenings



Allen Warren, Sara Ross, Bruce Easmunt, and Tiago Bezerra recently presented at the Washington Metro Chapter of the Community Associations Institute ("WMCCAI") 2022 Conference & Expo on a variety of topics including, project management, community governance, insurance, and business partner essentials.



Lesley Rigney and **Lauren Ritter** were the keynote speakers and **Jerry Wright** presented the Legislative Update at the 2022 Central Virginia Chapter of Community Associations Institute Community Associations Day Trade Show and Expo.



Janeen Koch was recently a panelist at the Virginia Association of Defense Attorneys Spring Sections Seminar on "Defending Wrongful Death and Survival Actions in Virginia!"

Dan Blom, Lindsey Davis, Michelle Wahab and Tiago Bezerra volunteered at the WMCCAI Potomac Watershed Cleanup event held on April 23, 2022 and helped clean up part of the community!

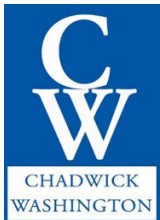


Brendan Bunn will be presenting a seminar at WMCCAI's Manager Luncheon on **May 25, 2022**. The topic for the session is "When Boards Make Mistakes" and will cover strategies for mitigating the legal effects of errors and mistakes made by community association boards of directors in a variety of situations. **For more information and to find out how to register for this event, please click [here](#).**



Check out through the link below the article "Self-Help, Procedure, and the Unexpected!" written by **Dan Blom** and recently published in the May 2022 edition of *Quorum*.

[Read full article](#)



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