



The Special Assessment February 2023 Edition

Common Interest Community Board Updates Resale Disclosure Fees

By Tiago D. Bezerra

The resale disclosure statutes set forth in the Virginia Condominium Act (“Condo Act”) and the Virginia Property Owners’ Association Act (“POA Act”) establish certain maximum charges that can be assessed for preparing the requisite disclosure documents when an owner sells his condominium unit or lot in a common interest community association. In these statutes, specifically Section 55.1-1992(F) of the Condo Act and Section 55.1-1810(F) of the POA Act, the maximum allowable charges are increased every five years based on the United States Average Consumer Price Index for all urban consumers (commonly referred to as the “CPI-U”), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

Given that the last increase occurred in 2018, it has been high time that an update in what can be charged for resale disclosures be made. In accordance with established policy, the Virginia Common Interest Community Board (“CICB”) recently published updated guidance documents showing the new maximum allowable fees for preparation of resale disclosure documents – links to each guidance document can be found below and are otherwise available online [HERE](#). ***These new fees became effective January 12, 2023.*** Notably, the fee increases do not apply to property owners’ associations that are not professionally managed unless the association provides disclosure packets electronically and otherwise complies with the requirements set forth in Section 55.1-1810 of the POA Act.

The difference is quite staggering, as the CPI-U difference between December 2017 to December 2022 amounted to 20.4%, easily the greatest increase since the maximum fees were initially established in 2008. Where last year inspection of a lot or unit and preparation of an electronic disclosure packet or resale certificate would be subject to a maximum charge of \$264.08, the same service may result in a charge of \$317.95 this year – greater than a \$50 increase!

Boards of directors may consider passing along the news to association members, particularly as the spring blossoms and the housing market (presumably) heats up. We should also mention that changes to the resale disclosure packets are



always subject to change each year while the General Assembly is in session. We anticipate some changes may occur this year and will provide updates regarding what, if any, changes are ultimately adopted and signed into law and the impact they may have on how your community association operates.

Links to the CICB's Updated Maximum Allowable Preparation Fees for Disclosure Packets are below:

- [Condominiums](#)
- [Professionally Managed Property Owners' Associations](#)
- [Non-Professionally Managed Property Owners' Associations](#)



Addressing the Epidemic of Bad Behavior

By Brendan P. Bunn

Across our client base, we have been witnessing an apparent uptick in incidents of bad behavior by community association owners and residents. Here are some examples:

- A disturbed resident in Northern Virginia, after two months of harassing neighbors and damaging common areas, was finally taken into custody by a SWAT team (after barricading himself in his unit) for various alleged crimes and/or harassment of his neighbors. Significant damage to the unit and common areas resulted from the various incidents.
- A resident in Central Virginia, after months of threatening other residents enjoying their community lake, barricaded himself in his garage, threatening to harm himself with a weapon. After a standoff with law enforcement he was finally taken alive, armed only with a pellet gun.
- An owner in a DC high-rise, after repeatedly snipping the building's fire alarm wires (believing he was being monitored by a developer) was arraigned for vandalism and ultimately visited by mental health authorities – but later died in his unit, apparently by suicide.

Unfortunately, incidents like this are not isolated to our locality. In communities elsewhere, **truly frightening violence has occurred**. A Florida board president and her husband were killed in December 2022 by a resident who had a dispute with the board. That same month in Toronto, a 73-year-old resident -- in the midst of a dispute with his condo board -- shot and killed five people, three of whom were directors. This past summer in Georgia, an angry owner sued her association -- and later shot the building manager and engineer before being apprehended.

Causes? Identifying causes that lead to patterns of scary or aggressive behavior in common interest communities is never easy. Is it the long-term consequences of the pandemic? Is it the acrimonious, polarizing state of our politics? Is it the effect of social media platforms that allow fact-challenged people to find one another and share conspiracy theories?

Whatever the causes, it seems something is in the air.

Strategies. When an association finds itself facing bad resident behavior, determining the right strategy to address the situation is paramount. All situations are different. Some residents may be mere nuisances, rudely treating managers and neighbors, but never quite crossing the line into criminality. Others migrate more clearly into unlawfulness, while

still others have problems driven by mental illness rather than criminal animus. While all situations have unique qualities, here are **tips and strategies** for some common situations:

- **Outreach to Owner.** Remembering that a difficult resident is usually a co-owner in your community, **informal outreach** by a director or staff can be useful, particularly if there are any vestiges of a neighborly relationship in the mix. This can be a good first step if the misbehavior is on the minor side, and the association is trying to nip the problem in the bud.
- **Outreach to Family or Social Services.** If a resident is engaging in light criminal activity or more nuisance-like behavior, it is often due to mental illness. In these cases, it may be wise to **contact the resident's family**, if the association has contact information. It is increasingly common to collect "emergency contact" data, which can be useful if intervention by family can help deescalate a mental health problem before it melts into crisis. Similarly, outreach to **adult protective services** or the local mental health authority can help if the person seems to be a danger to themselves.
- **Cease and Desist Letter.** If informal efforts fail, dispatch a demand letter to the resident **memorializing the bad acts (in detail)**, along with a demand that the resident **cease such behavior** going forward. It is usually best to have the letter first come from the board or management, thus saving "legal letterhead" for a subsequent letter as a sign of heightened urgency. Either way, the letter should **explain the consequences of failing to desist**. Such letters are essential if litigation ensues.
- **Adopt anti-harassment policy.** Such a policy can expressly prohibit behavior that will not be tolerated, especially harassment of employees or volunteers, or misbehavior at association meetings. Most documents allow this kind of rulemaking, **so an owner who violates the anti-harassment rule can be treated like a violator, allowing imposition of fines, suspension of privileges or other remedies.** Another option to consider, particularly as to harassers, is to suspend the owner's personal access to staff, relegating the owner to conduct association business in writing only.
- **Seek a court order.** If all else fails, and a resident simply will not stand down from harassing the board, management or their neighbors, **a civil injunction can be sought**, where a judge issues an order prohibiting such actions. An injunction can have real teeth, as it can be enforced through contempt-of-court remedies and/or assistance from law enforcement. Litigation – if allowed by the documents -- should be seen as a "last resort" after all other remedies have been tried. This approach may be taken in conjunction with efforts by affected persons to seek restraining orders (which must be sought from the criminal court by the harassed individual).
- **Email Harassment.** Some residents may choose not to confront the board or staff in the light of day but prefer to send **incendiary and/or inappropriate emails**. Remember, an association is generally not obligated to respond to emails that are uncivil, aggressive and unprofessional. If a resident is sending such emails, issue a warning that such emails will be ignored – and if the resident continues, **block the account**. Remember that email is a privilege – but make sure to provide an alternate form of communication so the owner can do necessary business with the association.



- **Criminal Activity.** One fact to remember is that **community associations are not law enforcement.** Associations are private entities carrying out contractual mandates to manage, maintain and operate their communities. If a resident has crossed over from being a nuisance or a jerk into committing criminal activity, this is usually beyond the association's purview. Accordingly, we suggest:



- o **Call Police.** Associations should advise affected owners to contact law enforcement in real time. Too often, residents being harassed by neighbors first call their association. **The better approach is to call the authorities.**
- o **Meet With Community Police.** If an owner has a pattern of behaving in a harassing manner, it can be useful to **meet with community liaisons in the police department**, as well as local authorities who deal with mental health problems among citizens. Both police and social service agencies can benefit from a direct connection with residents affected by harassers.
- o **Evidence.** Prosecutors need evidence. Cameras that record bad behavior are key to collecting evidence and **can be worth the investment.** Remind owners that they also may collect video or audio evidence.
- o **Bring Police or Sheriff to Meetings.** If there is a likelihood of disruption or threats at a meeting, it can be effective to **invite one's local community police officer** to give a local crime report or provide tips on community safety. The mere presence of a uniform can be just the right incentive for an otherwise unruly resident to behave during a meeting.

Final Thoughts. About four years ago, in recognition of a seeming dearth of civil behavior within the association world, the Community Associations Institute ("CAI") adopted a Community Association Civility Pledge. The Pledge is set up as a resolution that an association can adopt to promote civility and neighborly behavior, particularly when disputes occur. Check it out [HERE](#) and consider it for your association. Perhaps, if we all get ahead of this, associations can help re-direct our industry towards safer, more civil ground.



Changes to the DC Condo Act's Warranty Provisions Set to Take Effect

By Brad M. Barna

The DC Council recently made significant changes to the provisions of the DC Condominium Act ("Act") relating to the warranty that each developer provides to condominium associations and unit owners.

Specifically, pursuant to the Act, each developer of a condominium warrants the common elements of the condominium for two years from the date of first sale in a given condominium (or phase of a condominium) and warrants each individual unit for two years from the date of that individual unit's initial sale from the developer. Developers are also required to submit a bond or letter of credit, in the amount of 10% of construction costs, to the city as part of the development process, with the funds from that bond or letter of credit serving as a source of funds to address any structural defects

within the condominium that are covered by the statutory warranties. Over the years, the administrative procedures for handling the bond process have been unclear and varied considerably without any discernible change in law, including requirements not found in the law and applied solely by administrative agents.

The DC Councilmembers heard from many of their constituents and the DC Legislative Action Committee of the Washington Metro Chapter of the Community Association Institute (“WMCCAI”), regarding the practical issues that associations and developers faced under the prior law and decided to amend the Act to address some of those concerns.

The full text of the legislation can be found [HERE](#), but the most notable changes are as follows:

1. The definition of “structural defect” has been expanded to include violations of the applicable building code, but only if such violation results in demonstrable harm to the health or safety of residents or if units are conveyed prior to a certificate of occupancy or substantial completion of the condominium. Previously, the building code was a factor in determining if a component was defective, but it was not expressly stated in the Act.
2. If there is any resulting damage caused by a structural defect, the developer may now be required to repair such resulting damage as part of its warranty obligations. Previously, declarants were only responsible for correcting the defect and were not liable for resulting damages.
3. The procedure for establishing cost estimates to determine the 10% bond has been clarified. Developers are now required to obtain certified documentation as to the estimated “hard costs” of the project. In addition, the Act will require developers to supplement their bond with additional funds in the event that actual costs exceed the estimated costs by a certain amount. The Mayor has also been tasked with establishing a searchable online database containing information on condominium bonds. Previously, developers would often set the bond with little to no oversight as to whether or not the construction estimates were accurate.
4. The deadline for submitting a claim on the bond held with the city has been clarified so that while the warranty period is for two years from the date of sale, the time to file claims is now 5 years from the date of sale. There have also been established notice and response provisions for associations and developers to follow prior to making claims with the city. Previously, associations were forced to file warranty claims within the 2-year statutory warranty period or risk having their claim denied, creating a rush to perform inspections and file claims even prior to expiration of the warranty period.
5. The Act now prohibits condominium instruments from putting restraints on an association’s ability to assert claims against a developer. Previously, developers could insert procedural hurdles or roadblocks in the condominium instruments aimed to discourage or prevent associations from asserting claims. Such provisions included requirements that an association obtain approval of a majority of unit owners prior to asserting claims, fulfill certain dispute resolution prerequisites before asserting bond claims, and/or engage in mandatory alternative dispute resolution methods, such as binding arbitration.
6. The Act now also includes provisions for appeals of any warranty bond decisions to DC’s Office of Administrative Hearings. Previously, if a claim was denied, an association’s only recourse was to file suit. Now, associations can continue the administrative process before resorting to the courts. Note, however, that developers may now also appeal a bond award in a similar manner.
7. The Mayor has been tasked with establishing rules to implement these new provisions, with such proposed rules to be issued by mid-May 2023.
8. In addition, the Mayor has been tasked with establishing a fund to provide financial assistance to associations making claims on the warranty bond, including for inspections, cost estimates, and attorneys’ fees, with eligibility based on financial need as established by rule.

While the permanent version of this legislation is expected to go into effect on March 8, 2023, temporary legislation with the same provision is already effective as of January 10, 2023. This legislation is a significant step forward for condominium associations aiming to assert their warranty rights.



2023 Virginia Legislative Update *Call to Order*

By **Tiago D. Bezerra**

The Virginia General Assembly gaveled into session on Wednesday, January 11, 2023. This year, in accordance with House Joint Resolution 471, the General Assembly will remain at work for forty-five days – a so-called thirty-day “short session” extended by legislative agreement for an additional fifteen days – when it is set to adjourn *sine die* on February 25, 2023.

For at least one more session, the Virginia General Assembly convened featuring divided party control between the Republican-controlled House of Delegates and the Democrat-controlled Senate. While the executive branch remains held firmly by Republican officials for at least three more years, the *entire* General Assembly will be up for re-election this upcoming November 2023. Suffice it to say, *Politics as Usual* is expected in Richmond this session.

As is the case each year, we are taking stock of various legislative initiatives being introduced that, if adopted, may impact community associations at varying levels. The focus of legislators changes every year, and this year is proving to follow that trend. From bills proposing changes to resale disclosure requirements, impediments to foreclosures, elimination of nomination committees, and revisions to rule enforcement provisions – to name a few – this legislative session, albeit short, is expected to raise some interesting issues for legislators to consider. The good news is that reserves are not in the offing...at least until next year!

Given that these bills are simply that – just bills – we will not provide a complete analysis of everything being considered. In fact, it is very likely that by the time you read this report, some of the bills will already be “dead.” There is no need to fret, however, as the attorneys at Chadwick Washington will remain front-and-center as the *Sausage Gets Made* in Richmond, ready to provide its clients, business partners, and interested parties with a full report and recommendations for how to navigate the results of the 2023 legislative session, come what may.

To that end, CWMEB will prepare its annual report shortly after the General Assembly adjourns at the end of February. Until then, keep on keeping on and don’t lose any sleep on this stuff...yet!

Click [**HERE**](#) to access the Inaugural Edition of the
CWMEB Litigation Report!

Prepared by CWMEB’s Litigation Team, featuring
Janeen Koch and Henry Moore



Firm Happenings



Wil Washington has been invited to address the agents and brokers of the Northern Virginia Association of Realtors (“NVAR”) in a joint CAI-NVAR program on February 16, 2023. The program is designed to enhance realtors’ knowledge of the significance of legal, financial, operational and disclosure issues purchasers and sellers need to address involving community association home sales and purchases. Wil is also presenting a program entitled *Solar Panels Electric Vehicles – Environmentally Friendly Technologies...How to Navigate* at the 2023 Conference & Expo hosted by the Washington Metro Chapter of Community Associations Institute (“WMCCAI”) on February 25, 2023, in Washington DC. More information about this event and how to register can be found [HERE](#).



Brendan Bunn and **Bruce Easmunt** will be presenting the *Business Partners Essentials* course at the 2023 Conference & Expo hosted by the WMCCAI on February 25, 2023, in Washington DC. More information about this event and how to register can be found [HERE](#).



Tiago Bezerra will be presenting a program entitled *Who Wants to be a Community Association Lawyer?* at the 2023 Conference & Expo hosted by the WMCCAI on February 25, 2023, in Washington DC. More information about this event and how to register can be found [HERE](#).



Michael Sottolano will be presenting at the Board Leadership Workshop hosted by the Southwest Virginia Chapter of Community Associations Institute (“SWVA-CAI”) on February 7, 2023. This workshop is a hybrid event with the opportunity to attend in person or virtually using electronic means. More information about this event and how to register can be found [HERE](#).



Lesley Rigney will be speaking at the Homeowner Leadership Workshop Q&A hosted by the Central Virginia Chapter of Community Associations Institute (“CVC-CAI”) on February 23, 2023. This is a virtual event and more information regarding the event as well as how to register can be found [HERE](#).



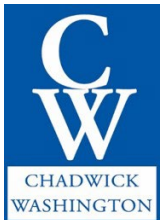
At the recent Community Associations Institute Law Seminar in New Orleans, Louisiana, **Sara Ross** was inducted into the prestigious College of Community Association Lawyers (“CCAL”) and presented a program entitled *What’s So Funny ‘Bout Peace, Love, and Understanding: Protests in Community Associations*. Sara is also serving as Chair of the CAI Business Partners Council and Trustee on the CAI Board of Trustees for 2023. In addition, she is President-Elect of WMCCAI.

Bruce Easmunt and **Tiago Bezerra**, along with Rebecca Shiland of the Portland, Maine law firm Jensen Baird, recently presented their program entitled *Aiding & Abetting: Lawyer Liability for A Client's Breach of Fiduciary Duty* at the Community Associations Institute Law Seminar in New Orleans, Louisiana.



Lauren Ritter and **Tiago Bezerra** were recently featured on the website for Southeast Virginia Chapter of Community Associations Institute (“SEVA-CAI”) which published their article “Striving for Architectural Compliance,” which was jointly authored by Crystal Coats of Exterior Medics and Rebecca Winchester of FirstService Residential. The full article can be found at the link below.

[Read full article](#)



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