

June 2012

Community Associations Legislative Alert

VIRGINIA LEGISLATIVE ALERT

There are two pending changes in Virginia law which have fast-approaching deadlines for compliance and which impact condominium as well as homeowner associations throughout Virginia. As explained in more detail below, associations must adopt by July 1, 2012 a cost schedule related to the provision of books and records to members, and must create and adopt by September 28, 2012 a complaint procedure in light of recently adopted regulations.

Cost Schedule and Access to Association Books and Records

Effective July 1, 2012, a new law will go into effect in Virginia that impacts condominium unit owner associations as well as homeowner associations and requires immediate action by the association's board of directors.

Under current Virginia law, prior to providing copies of any books and records, an association may impose and collect a charge reflecting the reasonable costs of labor and material, but not to exceed the actual costs thereof. However, effective July 1, 2012, Section 55-79.74:1 of the Virginia Condominium Act and Section 55-510 of the Virginia Property Owners' Association Act will be expanded to further provide that those charges can be imposed *only* in accordance with a cost schedule adopted by the association's executive organ. The expanded statutes also provide that the cost schedules must: 1) specify the charges for labor and materials; 2) apply equally to all members in good standing; and 3) be provided to the requesting member at the time the request for records is made.

This legislative change was originally brought to our clients' attention in our Virginia legislative memo dated May 2011. A subsequent alert was issued earlier this year as a reminder that the new law would take effect on July 1st. Now that the law is about to go into effect, we recommend that our clients' boards of directors adopt the requisite cost schedule by way of an administrative resolution that includes these new requirements and outlines the procedures and steps involved in the provision of records to members. If you have questions about these pending changes to the law, or if you would like us to assist in drafting such a resolution to help your community, please contact one of our Community Association attorneys.

Virginia Ombudsman Regulations

Recently, regulations were finalized that govern association complaint procedures and the actions of the Common Interest Community Ombudsman created by § 55-530 of the Virginia Code. The regulations were initially drafted in 2009 and were published in draft form last year by the Common Interest Community Board.

These regulations define an association's obligation to create a complaint procedure process as well as the process that governs the submission of a "final adverse decision" to the Ombudsman for consideration.

The complaint procedure regulations will become effective on July 1, 2012. Associations must establish and adopt a complaint procedure within 90 days of that date. Consequently, associations will need to adopt the requisite complaint procedures by no later than September 28, 2012.

Complaint Process.

1. Under the regulations, each association is required to have a written process for resolving association complaints received from members and other citizens of the Commonwealth of Virginia.
2. Any existing association registered with the Common Interest Community Board must establish and adopt an association complaint procedure within 90 days of July 1, 2012.
3. Any association filing an initial application for registration with the Common Interest Community Board must certify that the association's complaint procedure has been or will be established and adopted within 90 days of such filing.
4. Associations must certify with each annual report filing that the association's complaint procedure has been adopted and is in effect.
5. The complaint procedures must include the following components:
 - a. The complaint must be in writing.

- b. The association must have a sample of the form, if any, on which the association complaint must be filed, and must provide the sample of the form upon request.
- c. The complaint procedure must include a process by which complaints are delivered to the association.
- d. The association must provide written acknowledgment of receipt of the complaint within 7 days, which must be hand-delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.
- e. Any specific documentation that must be provided with the association complaint must be clearly described in the association's complaint procedure. In addition, to the extent that the complainant knows of any law or regulation applicable to the complaint, the complainant shall provide that reference as well as the requested action or resolution by the association.
- f. The association shall have a reasonable, efficient and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint.
- g. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.
- h. Within a reasonable time prior to consideration as established by the association's complaint procedure, notice of the date, time and location that the matter will be considered by the association must be hand-delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or, if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.
- i. After the final determination is made, within 7 days the written notice of the final determination must be hand-delivered or mailed by registered or certified mail, return

- receipt requested, to the complainant at the address provided or electronically, if applicable.
- j. The notice of the association's final determination on the complaint must be dated as of the date of issuance and include specific citations to applicable association governing documents, laws or regulations that led to the final determination, as well as the association's registration number on file with the Common Interest Community Board. If applicable, the name and license number of the Common Interest Community Manager must also be provided with the notice of final determination (therefore, if the association has a property management company, you must provide the name and license number of that property management company).
 - k. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and provide the applicable contact information of the Common Interest Community Ombudsman.
 - l. The association's complaint procedure must be readily available, upon request, to all members of the association and citizens of the Commonwealth.
 - m. The association's complaint procedure must be included as an attachment to the resale certificate or disclosure packet.
 - n. The association is required to maintain a record of each association complaint filed with the association in accordance with Section 55-530 E. 1 of the Code of Virginia. If the association receives a request from the Director of the Common Interest Community Board or their designee, the association must provide any documents, books or records concerning the association complaint within 14 days of receipt of such a request, unless otherwise specified.
 - o. Failure of an association to establish and utilize an association complaint procedure in accordance with the regulations may result in the Common Interest Community Board seeking any of the remedies available pursuant to Chapter 23.3 of Title 54.1 of the Code of Virginia.

Final Adverse Decision.

1. Following a final adverse decision by the association on a complaint, a complainant may file a Notice of Final Adverse Decision within 30 days of the decision date, in writing on forms provided by the Office of the Common Interest Community Ombudsman. The form shall request the following information:
 - a. Name and contact information of complainant;
 - b. Name, address and contact information of the association;
 - c. Applicable association governing documents; and
 - d. Date of final adverse decision.
2. When a complainant files a Notice of Final Adverse Decision, the Notice must include a copy of the association complaint, the final adverse decision, references to the laws and regulations the adverse decision may have violated, any supporting documentation relating to the final adverse decision that the complainant wishes to submit, and a copy of the association's complaint procedure.
3. The complainant is required to submit a \$25.00 filing fee or request for waiver of the filing fee when they submit the Notice of Final Adverse Decision. The filing fee may be waived or refunded by the Common Interest Community Board if the payment of the filing fee will cause undue financial hardship to the complainant.
4. Upon receipt of the Notice of Final Adverse Decision and filing fee (or approved waiver of the filing fee, if applicable) from the complainant, the Ombudsman shall provide written acknowledgement of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The Notice of Final Adverse Decision will not be reviewed until the filing fee has been received or a waiver of the filing fee has been granted by the Common Interest Community Board.

5. The Ombudsman has a right to request additional information from the association. Upon request, the association is required to provide such information to the Ombudsman within a reasonable period of time.
6. If the Director of the Common Interest Community Board determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Common Interest Community Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations or interpretations thereof. (It is our understanding that the Ombudsman's Office will carry out the duties of the Director of the Common Interest Community Board that are referenced in these regulations).
7. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Common Interest Community Board shall be a matter within the sole discretion of the Director. Any such decision is final and not subject to further review. The Director's determination shall not be binding upon the complainant or the association that made the final adverse decision.

You may review the regulations at <http://register.dls.virginia.gov/vol28/iss19/v28i19.pdf>.

Please contact one of our Community Association attorneys to discuss these regulations and to ensure that your association takes appropriate steps to adopt the requisite complaint procedures before September 28, 2012.