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Dusting Off the Resale Disclosure Package . . . Every Single Year

The biggest concern with resale disclosure packages is that associations are bound by the disclosures made in the package.

The statutes that govern resale disclosure packages are consistently changing. It's difficult to keep up with which documents must be provided at the time of resale, how quickly the documents must be provided, and how much may be charged for the compilation of such documents. If the resale documents are not routinely reviewed, they can quickly become stale and incomplete. For these reasons, it is important that the resale disclosure package be reviewed at least once a year, hopefully with the assistance of an attorney.

Virginia, Maryland, and the District of Columbia each have laws that regulate the documents and information that must be included in the resale disclosure package, as well as technical requirements related to the format, timing of delivery, and the costs that may be charged for providing them.

Once the seller requests the resale disclosure package, the package must be provided within a set period of time. Currently, in Virginia, the association has 14 days; in D.C., the association has 10 days; and in Maryland, the association has 20 days. If the resale documents are not provided within the required timeframe, it could result in the cancellation of the pending sale.

The contents of the resale disclosure packages are also governed by the statute for the applicable jurisdiction. The requirements vary but may include some of the following: the amount of the current assessments and any unpaid assessments; current or potential special assessments; the current reserve study and budget; the status of



pending litigation; a summary of the insurance provided for the owners and the association; a summary of any violations on the property; a copy of the governing documents and rules and regulations; the minutes of the board and association; a statement regarding any restrictions on the number of persons who may reside in a dwelling; any flag, solar energy and/or sign restrictions; and/or a statement regarding any known secondary mortgage market agency approvals.

In light of the required inclusions, resale disclosure packages are often voluminous. Fortunately, community associations can assess fees for preparation of the packages. In Maryland, associations are permitted to charge a reasonable fee that does not exceed the actual cost to the association to

prepare the disclosure package. D.C.'s Condominium Act contains no restriction regarding the fee that may be charged, although it is prudent to charge a fee that does not exceed the actual cost to the association. Virginia is far more complicated and a number of factors dictate what may be charged for preparation of the package, including whether the association is professionally managed, whether an inspection was performed, the requested format for the package, whether it be hard copy or electronic, and whether the package must be expedited. Of note, Virginia also prohibits a professionally managed community association from demanding payment of the fees before providing the package, whereas the fees may be collected upfront or via settlement in Maryland and D.C.

As previously noted, the requirements for resale disclosure packages consistently change so reference should be made to the applicable statutes when compiling resale packages. Perhaps the biggest concern with resale disclosure packages is that associations are bound by the disclosures made in the package. If, for example, a package states that there are no known violations on a property when in fact there are violations, an association may be barred from taking enforcement action against the purchaser in the future. Failure to provide required disclosures or accurate information could lead to a future dispute with the new owner or possibly litigation. Therefore, it is imperative that you review your resale disclosure package on an annual basis to confirm accuracy and completeness. 