Delegate Thomas Rust and
The Herndon Community Association Coalition (HCAC)

2014 Common Interest Community Seminar
May 3, 2014
9 am to 1 pm
Mary Ingram Council Chambers, Herndon

Agenda

I. 9:00 Welcome and Introductions- Charles Waddell, President, HCAC

II. 9:10 Opening Remarks- Delegate Tom Rust

III. 9:30 Overview of Seminar Goals- Betsy Johns, NRP

IV. 9:40 Legislative Update from 2014 Session- Bill Marr, Attorney

   A. Summary of Legislative Changes

   B. Specific Topics

      i. Violation Enforcement
      ii. Late Fees
      iii. Access to Books and Records
      iv. Other

   C. Expectations of 2015 Legislative Session

      i. Significant Bills held over
      ii. New agendas
      iii. Need for Community Involvement

V. 10:45 Break

VI. 11:00 Board of Directors- Responsibility and Authority- Betsy Johns

   A. Sources of Obligations and Authority
   B. The Board as a Fiduciary/Financial Management
   C. Maintenance
   D. Resale/Disclosure Packages
E. Meetings- Board & Member Meetings
F. Fair Housing Act and the Association

VII. 12:00 Open Discussion

VIII. 1:00 pm  Closing Remarks- Charles Waddell

SPEAKERS

Betsy Johns is a partner and CFO with National Realty Partners LLC (NRP), located in Herndon, VA. NRP manages homeowner and condominium associations, as well as commercial and retail properties, throughout Northern Virginia.

Betsy is the former founder, sole owner and president of AMSi which merged with NRP in 2008. For the past 30 plus years as a business owner, she has provided management services to both commercial and residential associations in the Commonwealth of Virginia and District of Columbia. She holds the highest designation in the association management industry, the Professional Community Association Manager (PCAM).

Ms. Johns has served her industry as a volunteer throughout her career. For the past several years she has served as one of the volunteer professionals for the Herndon Community Association Coalition (HCAC). The primary purpose is to work in partnership with the Town of Herndon to enact and enforce ordinances that are beneficial to the Town and to the communities as well as educate the volunteer community leaders.

In addition to her work with the HCAC, Ms. Johns has remained actively involved with the Community Associations Institute (CAI) where she is a former co-chair and a current member of the Washington D.C. chapter’s education committee, is a frequent speaker on the Fairfax County Cable TV program, “Your Community, Your Call”, writes for various industry publications, and teaches programs to community leaders and professionals in the industry.

She was one of the first women accepted at The College of the Holy Cross in Worcester, MA, receiving degrees in economics and accounting. She served in leadership positions that came with challenge, such as student body Treasurer and Captain of the first women’s crew team. Following graduation, she became one of the first women on the professional staff of one of the “Big 8” CPA firms, on the auditing staff, followed by a transfer to the consulting staff. During these early work years, she became involved with her own homeowners association as a volunteer which led finally to the opening of her own management firm in 1981.
With her extensive financial management background and many years serving as a fiduciary for her clients, Ms. Johns was appointed and now serves on the Board of Directors of MainStreet Bank.

WILLIAM A. MARR, JR. is a practicing attorney with offices in Fairfax, Virginia. He graduated from the University of Virginia with a Bachelor of Arts, Economics, and Georgetown University Law Center with a Juris Doctor where he was a member of Barrister’s Council and Phi Delta Phi Legal Fraternity.

Between college and law school, Mr. Marr served on active duty in the United States Marine Corps as an Infantry Officer and continued to serve as a Major in the United States Marine Corps Reserve.

During his 30 plus years in practice, Mr. Marr has focused on civil law, primarily in the areas of business law, real property matters and civil litigation. Mr. Marr represents various small business clients as well as numerous condominium and community associations.

He is a Business Partner of the Community Associations Institute (CAI) and currently serves as Chairman of the Washington Chapter’s Virginia Legislative Committee and is a Member of the Virginia Legislative Action Committee. He is currently a member of the Board of Directors of the Property Owners Association of Virginia (POAVA) and serves as President of the organization. He has lectured and participated in panels on a variety of topics related to condominium, homeowner and property owner associations.

Law office of William A. Marr, Jr. 703-691-2800
The Office of Delegate Tom Rust and The Herndon Community Association Coalition (HCAC) Present a Seminar for Volunteer Community Leaders

SPEAKERS

- Betsy Johns, CFO/Partner, National Realty Partners LLC
  Managers of Common Interest Community Associations
  Herndon, Virginia

- William A Marr, Jr., Attorney
  Law Office of Wm A Marr Jr.
  Fairfax, Virginia

The Board Responsibility&Authority

- Sources of Obligations and Authority
- Board as a Fiduciary/Financial Management
- Maintenance- by Association and Owners
- Resale/Disclosure Packages
- Meetings- Board & Member
- Fair Housing Act (FHA) and the Association

COMMON INTEREST COMMUNITIES

- Condominium
- Cooperative
- Planned community (HOA)
- Master association (HOA)
RIGHTS & OBLIGATIONS

- Developer
- Owners
- Board Members
- Officers
- Committees

Sources of Obligations & Authority
LEGAL DOCUMENTS

- Declaration
  - Condominium
  - HOA
- Proprietary lease
  - Cooperative
- Articles of Incorporation
- Bylaws
- Book of Resolutions

OTHER INFLUENCES

- Federal:
  - Federal Housing Administration (FHA)
  - FNMA/Freddie
  - Fair Housing ACT (FHA)
- State
  - Condo Act
  - Property Owners Act
  - DPOR/CICB
- Other
  - Auditors
  - Fair Debt Collection Act

The Board as a Fiduciary &
Financial Management
Responsibilities

Responsible to:
- Owners
- Future Owners
- Purchasers
Board’s Fiduciary Responsibilities

- Legally responsible for the finances of the Association.
- Maintain property values: fund for proper maintenance.
- Protect Association funds.
- Assure the financial health of the Association.

*Failure to fulfill fiduciary duties may create liability for breaching duty of ordinary care.*

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**FINANCIALS**

**ACCRUAL VS CASH ACCOUNTING**

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**CPA REPORTING**

- Evaluation Levels
  - Compilation: least review
  - Review
  - Audit: highest scrutiny

- Done in Accrual Accounting Method

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**Accrual:** Accounting method that recognizes income when charged and expenses when incurred even if not paid yet.

**Cash:** Accounting method that recognizes income when received and expenses when paid.
ACCRUAL VS CASH ACCOUNTING

In the simplest of cases, if all members paid all assessments (no accounts receivable), and all bills from vendors were paid (no accounts payable) then CASH METHOD would equal ACCRUAL METHOD.

FINANCIAL REPORT/TOOLS

- Planning
  - Budget
  - Reserve Study
- Operation
  - Balance Sheet
  - Income and Expense Statement
  - Budget Variance Report
  - Bank Reconciliation Statement
  - Accounts Receivable Report
  - Accounts Payable Report

MAINTENANCE

- COMMON AREAS
  - By the Association- Reserve Items & Routine
- LIMITED COMMON AREAS (Condo)
  - Depends!
- CONDO UNITS
  - Typically Owner but DEPENDS!
- HOMES- HOA
  - Owners- area of enforcement
DETERMINE WHO HAS THE AUTHORITY AND OBLIGATION TO ACT

- Pipestem Driveways
  - Declaration
  - Bylaws
  - Plat
- Windows- Condo
  - Declaration- Unit Boundaries
  - Bylaws- Maintenance Chart

RESERVES

- Defined: Funds set aside for the major repair and/or replacement of specific items that deteriorate over a period longer than the threshold number of cycles the budget can support and are of a cost that would be prohibitive in the normal operating budget.

- Goal: To amortize the contribution to the reserve over the deterioration period such that those benefiting from the capital item contribute their fair share to the eventual replacement rather than those who happen to be owners at the time of replacement. The replacement costs and life expectancy of capital items should be based on an independent expert's opinion.

RESERVES

- Reserve study required by law every 5 years.
- Study must be updated internally every year.
- Is greatest tool for long term planning of cash needs.
- Study must be provided to potential purchasers as well as current balance.

RESALE/DISCLOSURE CERTIFICATES/PKGS

- Seller required by law to obtain from Association for buyer.
- Law specifies exactly what disclosures must be in certificate.
- Law specifies what documents are to be provided.
- Law sets cost of package.
- Resale Inspection- part of process
RULE ENFORCEMENT

ENFORCEMENT PROCEDURES
- Internal Enforcement Procedures
  - Procedures to induce willing compliance
  - Rule enforcement hearing
- External Enforcement Procedures
  - Mediation
  - Arbitration
  - Litigation

RULE ENFORCEMENT
- Owner Complaint
  - Can the complaint be verified?
  - Engage Complainant in process
- Routine Inspections
  - Maintenance Violations
  - Architectural Approval Violations
- Resale Disclosure Inspection

ENFORCEMENT HEARING PROCEDURES
- Governed by law
- Notice of Hearing
  - Date, time and location
  - Advance written notice
  - Counsel may be present
- Opportunity to be Heard
- Notice of Outcome of Hearing
  - In writing after hearing
ENFORCEMENT HEARING ERRORS

- Before
  - Didn't attempt to settle amicably
  - Didn't explain variance procedure
  - Didn't file complaint
  - Didn't send notice of violation

- During hearing
  - Chair disorganized
  - Board member was rude
  - Not prepared for hearing
  - Relative participated rather than owner
  - Didn't give owner time to gather and present evidence
  - Didn't view property

- Conclusion of Hearing
  - No valid reasons for decision
  - Penalty is unreasonable or exceeds the law.

- Before Meeting
  - Notice not adequate
  - Preparation not adequate
ENFORCEMENT
HEARING ERRORS

- During Meeting
  - Started late
  - Two members never come
  - Started without a quorum
  - Didn't read background material
  - Didn't follow parliamentary procedure
  - Didn't follow agenda
  - No time for resident input
  - Maybe breach of duty of loyalty
  - May not have authority to levy assessments
  - Didn't take minutes

BOARD MEETINGS

- Notice of Meetings- It's the Law!
- Distribution of Meeting Materials
- Establish an Agenda
- Homeowner Comments at Open Forum
- Parliamentary Procedures, i.e. Roberts Rules of Order
- Meeting Decorum
- Executive Session
- Minutes

TIPS FOR EFFICIENT BOARD MEETINGS

- Adopt Agenda as 1st action
- Establish Procedures for Owner Forum
- Follow the Agenda and Procedures
- Use Roberts Rules to Limit Extended Discussion or to Reduce Off-Topic Discussion (i.e. call for orders of the day)
- Develop a “Parking Lot” for Contentious Issues
MEMBER VS BOARD MEETINGS

- Notice Requirements
  - Different, found in law and Bylaws

- Member Meetings-
  - Bylaws will say if proxy voting allowed and requirements
  - Quorum is specified in Bylaws, is specific number of owners. Number of Directors attending is not relevant.

- Board Meetings-
  - No proxy voting
  - Quorum of Directors required in person or by phone- with restrictions.

FAIR HOUSING ACT

- Associations are vulnerable to charges of discrimination.
- If found to be true, is a violation of law.
- Will create liability for individuals and association.
- D&O Insurance is source of defense funds—MAYBE!
- D&O does not cover sanction.

FAIR HOUSING ACT- cont’d

Request for “Accommodation”

- Examples:
  - Signing Interpreter for membership meeting
  - Companion animal
  - Reserved Handicap Parking
  - Approval of ARC application to install ramp on home by disabled owner

FAIR HOUSING ACT- cont’d

Request for “Modification”

- Usually At Owner’s Expense
- Maintenance often at Association Expense if on common area.
- Examples:
  - Lift for Pool
  - Widen door to pool house
### 2014 CIC Industry & Industry related legislation

**INDUSTRY BILLS SIGNED by the Governor:**

<table>
<thead>
<tr>
<th>Bill #</th>
<th>Patron</th>
<th>Amended Code Section</th>
<th>Purpose</th>
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</thead>
<tbody>
<tr>
<td>HB530</td>
<td>Pogge</td>
<td>Condo Act: § 55-79.53. Compliance with condominium instruments.</td>
<td>This section shall not preclude an action against the unit/property owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.</td>
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<td>POA Act: § 55-515. Compliance with declaration.</td>
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<tr>
<td>HB550</td>
<td>Flicker-Corn</td>
<td>Condo Act: § 55-79.74:1. Books, minutes and records; inspection</td>
<td>Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an unit/property association managed by a common interest community manager and 10 business days' written notice for a self-managed unit/property owners' association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.</td>
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<td>POA Act: § 55-510. Access to association records; association meetings; notice</td>
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<tr>
<td>HB566</td>
<td>Watts</td>
<td>Condo Act: § 55-79.83:H. Liability for common expenses; late fees</td>
<td>Except to the extent that the declaration or any rules or regulations promulgated pursuant thereto provides otherwise, the executive organ/board may impose a late fee for, not to exceed the penalty provided in § 58.1-3915, any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.</td>
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<td>POA Act: § 55-513.3. Assessments; late fees</td>
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<tr>
<td>HB690</td>
<td>Massie</td>
<td>Condo Act: § 55-79.71:2. Merger or consolidation of condominiums; procedure.</td>
<td>Merge unit owners associations/Reformation of declaration</td>
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<td>§ 55-79.73:2. Reformation of declaration; judicial procedure</td>
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<td>POA Act: § 55-515.2:1. Reformation of declaration; judicial procedure.</td>
<td>Reformation of declaration</td>
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<td><strong>HB791</strong></td>
<td>LeMunon Sickles (Co-Patron)</td>
<td>§ 16.1-106. Appeals from courts not of record in civil cases.</td>
<td>Unit or Property Owners’ Associations and lot owners may file an action General District (courts not of record) or Circuit Court.</td>
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<tr>
<td><strong>HB791</strong></td>
<td>Condo Act: § 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules</td>
<td>B. Before any such suspension or charges may be imposed action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify. Notice of such hearing, including the charges or other sanctions actions that may be imposed taken by the unit owners’ association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address or addresses required for notices of meetings pursuant to § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.</td>
<td>D. The unit owners’ association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or duly adopted rules and regulations.</td>
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</table>
| **HB791** | POA Act: § 55-513. Adoption and enforcement of rules. | A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the association prevailing party court costs and reasonable attorney fees. B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member’s right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible. C. Before any such charges or suspension may be imposed action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the
| HB999 | Peace | **Condo Act**: § 55-79.88(3). Limitations on dispositions of units.55-79.88(3) and § 55-79.90. Public offering statement; condominium securities | The purchaser's right to cancel the purchase contract pursuant to subdivision 2 (includes 5 day review of the POS) shall be set forth on the first page of the purchase contract in boldface print of not less than 12 point type. |
| HB900 | Peace | **Condo Act**: § 55-79.97:1. Fees for resale certificate. **POA Act**: § 55-509.6. Fees for disclosure packet; professionally managed associations | A. The unit/property owners’ association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate/disclosure packet required by § 55-79.97/1, § 55-509.6, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit/property owners’ association or common interest community manager to charge an inspection fee for a unit/lot except as provided in this section. |
|       |       |                                                                 | B. A reasonable fee may be charged by the preparer of the resale certificate/disclosure packet as follows for: |
|       |       |                                                                 | 1. The inspection of the unit/lot, as authorized in the declaration and as required to prepare the resale certificate/disclosure packet, a fee not to exceed $100; |
|       |       |                                                                 | 2. The preparation and delivery of the resale certificate/disclosure packet in (i) paper format, a fee not to exceed $150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of $125, for no more than two electronic copies to each of the following named in the request: the seller, the seller’s authorized agent, the purchaser, the purchaser’s authorized agent, and not more than one other person designated by the requestor. Only one fee shall be charged for the preparation and delivery of the resale certificate/disclosure packet; |
| HB900 |       | **Condo Act**: § 55-79.97. Resale by purchaser. | The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or his authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. |
| HB900 |       | **POA Act**: § 55-509.6. Fees for disclosure packet; professionally managed associations | The seller or his authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or his authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. |
POA Act: § 55-509.4. Contract disclosure statement; right of cancellation. | Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or lot except as provided in § 55-509.6 or 55-509.7.  
C. ... that the association disclosure packet will not be available is hand delivered or, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service, and a receipt obtained; |
|-------|--------------------------------------------------|-------------------------------------|
| HB900 | POA Act: § 55-509.3. Association charges. | Covenants regarding solar power.  
A. Effective July 1, 2008, no community association shall prohibit an owner from installing or using a solar energy collection device on that owner's property unless the recorded declaration for that community association establishes such a prohibition. However a community association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55-79.97 and any disclosure packet pursuant to § 55-509.5, as applicable, given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.  
B. The community association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the community association. A community association may establish reasonable restrictions as to the size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area. |


| HB260/SB386 | Scott/Reeves | § 55-509.3  
POAs: Allowable fees against Tenants for use of common area/ no charges without authority |
|-------------|--------------|--------------------------------------------------|
| HB332 | Greason | § 55-530.01 (add)  
Owner Bill of Rights – may be referred to Housing Commission |
| HB524 | Pogge | Uniform Statewide Building Code  
Increase accessible/affordable units (ANSI A117.1) in multi family dwelling units to 10% |
| HB600 | Herring | § 55-79.94  
Condo conversion – right to occupy based on federal poverty guidelines/ Local ordinance grant right to elderly or disabled tenants |
| HB766 | Bulova | 15.2-2403  
Service Districts – add “energy and water conservation and management services to powers. |
| HB826 | Minchew | 36-103 and 36-105  
Uniform Building Code enforcement Increase Type A units from 2% to 10% - |
| HJ118 | Austin | Va Soil & Water Conservation Board’s Va Impounding Structure Reg (4VAC50-20)  
Dept Conservation & Rec study changes to impounding Structures that may result in cost savings to owners of dams without jeopardizing public safety. |
<table>
<thead>
<tr>
<th>Bill</th>
<th>Sponsor</th>
<th>Section Details</th>
<th>Notes</th>
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<tbody>
<tr>
<td>HB177</td>
<td>Farrell</td>
<td>§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties; penalty § 15.2-1215. Authority to cut growth of grass or lawn area in counties</td>
<td>Farrell and Lingamfelter. Statewide Grass, Weed &amp; Trash ordinance authority.</td>
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<td>3. The owners of occupied or vacant developed or undeveloped property therein, including ...</td>
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<td>No such ordinance shall be applicable to land zoned for or in active farming operation.</td>
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<td>HB268/SB51</td>
<td>Orrock/Stuart</td>
<td>§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.</td>
<td>Agricultural operations; local regulation of certain activities.</td>
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<td>A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:</td>
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<td>1. Agritourism activities as defined in § 3.2-6400;</td>
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<td>2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;</td>
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<td>3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or</td>
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<td>4. Other activities or events that are usual and customary at Virginia agricultural operations.</td>
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<td>Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.</td>
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<td>B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.</td>
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<td>C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.</td>
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<td>D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1.</td>
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<td>Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2782, or to restrict the authority of any locality under Title 58.1.</td>
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<td>2. That the Virginia Department of Agriculture and Consumer Services shall continue the On-Farm Activities Working Group.</td>
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<td>HB527</td>
<td>Pogge</td>
<td>§ 15.2-2291. Assisted living facilities and group homes of eight or fewer; single-family residence.</td>
<td>Zoning of Group Homes.</td>
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<td>A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident counselors or other nonresident staff persons, as residential occupancy by a single family.</td>
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<td>HB733</td>
<td>Lingamfelter</td>
<td>§ 46.2-1220. Parking, stopping, and standing regulations in counties, cities, or towns; parking meters; presumption as to violation of ordinances; penalty.</td>
<td>Localities authorized to enact ordinance to prohibit blocking of curb ramps, fire hydrants &amp; mailboxes on public or private property.</td>
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<td>The governing body of any county, city, or town may by ordinance provide for the regulation of parking, stopping, and standing of vehicles within its limits, including, but not limited to, the regulation of any vehicle blocking access to and preventing use of curb ramps, fire hydrants, and mailboxes on public or private property. Such ordinances may also include the installation and maintenance of parking meters. ...</td>
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<td>§ 46.2-1306. Prohibiting parking near certain fire hydrants.</td>
<td>Repealed.</td>
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<td>§ 46.2-1306.1. Prohibiting parking so as to prevent the use of curb ramps.</td>
<td>Repealed.</td>
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<tr>
<td>Bill Numbers</td>
<td>Sponsor</td>
<td>Section(s)</td>
<td>Text</td>
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<tr>
<td>HB1084/SB578</td>
<td>Morris/Obenshain</td>
<td>§ 15.2-2208.1</td>
<td>Damages for unconstitutional grant or denial by locality of certain permits and approvals. A. Notwithstanding any other provision of law, general or special, any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, including a special exception, special use permit, conditional use permit, rezoning, site plan, plan of development, and subdivision plan, where such grant included, or denial was based upon, an unconstitutional condition pursuant to the United States Constitution or the Constitution of Virginia, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without the unconstitutional condition and may be entitled to reasonable attorney fees and court costs. B. In any proceeding, once an unconstitutional condition has been proven by the aggrieved applicant to have been a factor in the grant or denial of the approval or permit, the court shall presume, absent clear and convincing evidence to the contrary, that such applicant’s acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial provided only that the applicant objected to the condition in writing prior to such grant or denial. C. Any action brought pursuant to this section shall be filed with the circuit court having jurisdiction of the land affected or the greater part thereof, and the court shall hear and determine the case as soon as practical, provided that such action is filed within the time limit set forth in subsection C or D of § 15.2-2259, subsection D or E of § 15.2-2260, or subsection F of § 15.2-2285, as may be applicable.</td>
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<tr>
<td>HB1173/SB423</td>
<td>Hodges/Hanger</td>
<td>62.1-44.15</td>
<td>Stormwater Management</td>
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<td>SB177</td>
<td>Reeves</td>
<td>§ 3.2-6528. Amount of license tax § 51.5-40. Nondiscrimination under state grants and programs § 51.5-40.1. Definitions § 51.5-42. Discrimination against otherwise qualified persons with disabilities by educational institutions prohibited. § 51.5-44. Rights of persons with disabilities in public places and places of public accommodation. § 51.5-45. Right of persons with disabilities to housing accommodations.</td>
<td>Service Dogs Definitions. As used in this chapter, unless the context requires a different meaning: &quot;Otherwise qualified person with a disability&quot; means a person with a disability who: 1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or 2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs. &quot;Otherwise disabled person&quot; means any person who has a physical, sensory, intellectual, developmental, or mental disability or a mental illness. &quot;Person with a disability&quot; means any person who has a physical or mental impairment that substantially limits one or more of his major life activities, or who has a record of such impairment, and that physical or mental impairment: &quot;Service dog&quot; means a dog trained to do work or perform tasks for the benefit of a mobility-impaired or otherwise disabled person. The work or tasks performed by a service dog shall be directly related to the individual's disability or disorder. Examples of work or tasks include providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting an individual to the presence of allergens, retrieving items, carrying items, providing physical support and assistance with balance and stability, and preventing or interrupting impulsive or destructive behaviors. The provision of emotional support, well-being, comfort, or companionship shall not constitute work or tasks for the purposes of this definition. &quot;Three-unit service dog team&quot; means a team consisting of a trained service dog, a disabled person, and a person who is an adult and who has been trained to handle the service dog. Rights of persons with disabilities in public places and places of public accommodation. A. A person with a disability has the same rights as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. For purposes of this section, a &quot;person with a disability&quot; means a person whose disability is unrelated to his ability to utilize and benefit from a place of public accommodation or public service.</td>
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### SB430

<table>
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<tr>
<th>Watkins</th>
<th>§ 4.1-208. Beer licenses</th>
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<td><strong>Right of persons with disabilities to housing accommodations.</strong> A. All persons with disabilities <em>unrelated to their ability to acquire, rent, or maintain property</em> shall be entitled to full and equal opportunity to acquire, as other members of the general public, any housing accommodations offered for sale, rent, lease, or compensation, subject to the conditions and limitations established by law and applying alike to all persons. &quot;Housing accommodations&quot; for the purpose of this section means any real property, or portion thereof, which is used or occupied or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall <em>not</em> include any single family residence the occupant or owner of which rents, leases, or furnishes for compensation not more than one room therein. B. Every visually-impaired visually impaired person who has a guide dog, any every hearing-impaired person who has a hearing dog, and every mobility-impaired or otherwise disabled person with a service dog, as those terms are defined in § 51.5-44, shall be entitled to full and equal access with such dog to all housing accommodations provided for in this section. He shall not be required to pay extra compensation for such dog but shall be liable for any damage done to the premises by such dog. C. Nothing in this section shall require any person offering for sale, renting, leasing, or providing for compensation real property to modify that real property or provide a higher degree of care for a person with a disability than for a person who is not disabled, except as provided in § 36-99.5, nor shall anything in this section require any person who is selling, renting, leasing, or providing for compensation real property to sell, rent, lease or provide such property to any person who would constitute a direct threat to the property or safety of others.</td>
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### SB430

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<tr>
<th>Watkins</th>
<th>§ 15.2-2288.3:1. Limited brewery license; local regulation of certain activities</th>
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<td><strong>A.</strong> It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § 4.1-208 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents. <strong>B.</strong> No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § 4.1-208: 1. The production and harvesting of barley, other grains, hops, or fruit, or other agricultural products and the manufacturing of beer; 2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery; 3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board; 4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; 5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or 6. The sale of beer-related items that are incidental to the sale of beer.</td>
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<td>SB470</td>
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| **§ 46.2-873.1. Maximum speed limit on nonsurface-treated highways.**

The maximum speed limit on nonsurface-treated highways, which are roads that are comprised of an earth-aggregate or aggregate surface (i.e., dirt and gravel) that have not been stabilized with a bituminous or cementitious material, shall be 35 miles per hour. The maximum speed limit upon such highways may be increased or decreased by the Commissioner of Highways or other authority having jurisdiction over highways. However, such increased or decreased maximum speed limit shall be effective only when indicated by sign on the highway. For such highways upon which maximum speed limit is not indicated by sign, the maximum speed limit shall be 35 miles per hour.

The provisions of this section shall apply in the Counties of Albemarle, Clarke, Fauquier, Frederick, Loudoun, Montgomery, Nelson, Page, Rappahannock, Warren, and Wythe and in any other county wherein the governing body adopts an ordinance pursuant to the provisions of this section.

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*C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.*
2014 SESSION

HB 791 Condominium and Property Owners' Association Acts; adoption and rule enforcement, appeals.

Introduced by: James M. LeMunyon

SUMMARY AS ENACTED WITH GOVERNOR'S RECOMMENDATION:

Condominium and Property Owners' Association Acts; rule enforcement. Provides that associations may file or defend a legal action in general district or circuit court to seek an order to require that any violation of the condominium instruments or rules duly adopted pursuant thereto be corrected. However, the bill provides that before any action authorized in the bill or in the governing documents is taken to enforce rules violations and after written notice of the alleged violation to the owner at the address required for notices of meetings, the owner shall be given a reasonable opportunity to correct the alleged violation. If the violation remains uncorrected, the owner shall be given an opportunity to be heard and to be represented by counsel before the board or such other tribunal as the governing documents or rules duly adopted pursuant thereto specify. The bill gives an appeal of right from general district court an action involving rule enforcement filed by a condominium unit owners' association or unit owner or of an action filed by a property owners' association or lot owner. The bill provides that in the event of a legal action involving rule enforcement, the prevailing party is entitled to recover court costs and reasonable attorney fees. Currently, only the association is entitled to recover such costs and fees.

FULL TEXT

01/07/14 House: Prefiled and ordered printed; offered 01/08/14 14102258D pdf
01/23/14 House: Committee substitute printed 14103962D-H1 pdf
02/17/14 Senate: Committee substitute printed 14103965D-S1 pdf
02/21/14 Senate: Floor substitute printed to Web only 14105241D-S2 (Petersen) pdf
03/07/14 House: Conference substitute printed 14105568D-H2 pdf
03/17/14 House: Bill text as passed House and Senate (HB791ER) pdf
04/06/14 House: Governor's substitute printed 14105713D-H3 pdf
04/23/14 House: Reenrolled bill text (HB791ER2) pdf
04/23/14 Governor: Acts of Assembly Chapter text (CHAP0784) pdf

AMENDMENTS

Senate amendments
Senate amendments engrossed
Conference amendments
Governor's recommendation

HISTORY

01/07/14 House: Prefiled and ordered printed; offered 01/08/14 14102258D
01/07/14 House: Referred to Committee on General Laws
01/10/14 House: Assigned GL sub: Subcommittee #1
01/14/14 House: Subcommittee recommends reporting with amendment(s) (7-Y 0-N)
01/21/14 House: Reconsidered by GL sub: Subcommittee #1
01/21/14 House: Subcommittee recommends reporting with amendment(s) (7-Y 0-N)
01/23/14 House: Reported from General Laws with substitute (21-Y 1-N)
01/23/14 House: Committee substitute printed 14103962D-H1

01/27/14 House: Read first time
01/28/14 House: Passed by for the day
01/29/14 House: Passed by for the day
01/30/14 House: Read second time
01/30/14 House: Committee substitute agreed to 14103962D-H1
01/30/14 House: Engrossed by House - committee substitute HB791H1
01/31/14 House: Read third time and passed House (60-Y 34-N 1-A)
01/31/14 House: VOTE: PASSAGE (60-Y 34-N 1-A)
02/03/14 Senate: Constitutional reading dispensed
02/03/14 Senate: Referred to Committee on General Laws and Technology
02/17/14 Senate: Reported from General Laws and Technology with substitute (14-Y 1-N)
02/17/14 Senate: Committee substitute printed 14103965D-S1
02/19/14 Senate: Constitutional reading dispensed (40-Y 0-N)
02/20/14 Senate: Read third time
02/20/14 Senate: Passed by for the day
02/21/14 Senate: Read third time
02/21/14 Senate: Floor substitute printed to Web only 14105241D-S2 (Petersen)
02/21/14 Senate: Passed by for the day
02/24/14 Senate: Read third time
02/24/14 Senate: Passed by for the day
02/25/14 Senate: Read third time
02/25/14 Senate: Reading of substitute waived
02/25/14 Senate: Committee substitute agreed to 14103965D-S1 (26-Y 14-N)
02/25/14 Senate: Title replaced 14103965D-S1
02/25/14 Senate: Substitute offered by Senator Petersen ruled out of order 14105241D-S2
02/25/14 Senate: Reading of amendment waived
02/25/14 Senate: Amendment by Senator Wexton agreed to
02/25/14 Senate: Engrossed by Senate - committee substitute with amendment HB791S1
02/25/14 Senate: Passed Senate with substitute with amendment (30-Y 9-N)
02/26/14 House: Placed on Calendar
02/27/14 House: Pending question ordered
02/27/14 House: Senate substitute with amendment rejected by House 14103965D-S1 (39-Y 55-N)
02/27/14 House: VOTE: REJECTED (39-Y 55-N)
03/03/14 Senate: Senate insisted on substitute with amendment (37-Y 3-N)
03/03/14 Senate: Senate requested conference committee
03/04/14 House: House acceded to request
03/05/14 House: Conferees appointed by House
03/05/14 House: Delegates: LeMunyon, Habeeb, Sickles
03/05/14 Senate: Conferees appointed by Senate

03/05/14 Senate: Senators: Barker, Petersen, Ruff

03/07/14 Conference: Amended by conference committee

03/07/14 House: Conference substitute printed 14105568D-H2

03/07/14 Senate: Conference report agreed to by Senate (37-Y 2-N)

03/07/14 Senate: Reconsideration of conference report agreed to by Senate (39-Y 0-N)

03/07/14 Senate: Conference report agreed to by Senate (35-Y 4-N)

03/07/14 House: Conference report agreed to by House (82-Y 15-N)

03/07/14 House: VOTE: ADOPTION (82-Y 15-N)

03/17/14 House: Enrolled

03/17/14 House: Bill text as passed House and Senate (HB791ER)

03/18/14 Senate: Signed by President

03/18/14 House: Signed by Speaker

04/06/14 House: Governor's recommendation received by House

04/06/14 House: Governor's substitute printed 14105713D-H3

04/22/14 House: Placed on Calendar

04/23/14 House: House concurred in Governor's recommendation (74-Y 19-N)

04/23/14 House: VOTE: ADOPTION (74-Y 19-N)

04/23/14 Senate: Senate concurred in Governor's recommendation (35-Y 4-N)

04/23/14 Governor: Governor's recommendation adopted

04/23/14 House: Reenrolled

04/23/14 House: Reenrolled bill text (HB791ER2)

04/23/14 House: Signed by Speaker as reenrolled

04/23/14 Senate: Signed by President as reenrolled

04/23/14 House: Enacted, Chapter 784 (effective 7/1/14)

04/23/14 Governor: Acts of Assembly Chapter text (CHAP0784)

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-106, 55-79.80:2, and 55-513 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-106. Appeals from courts not of record in civil cases.
From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than $50, exclusive of interest, any attorney fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, or of an action filed by a condominium unit owners’ association or unit owner pursuant to § 55-79.80:2, or of an action filed by a property owners’ association or lot owner pursuant to § 55-513, there shall be an appeal of right, if taken within 10 days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken and shall be heard de novo.

The court from which an appeal is sought may refuse to suspend the execution of a judgment that refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.2-3713 of the Virginia Freedom of Information Act. A protective order issued pursuant to § 19.2-152.10, including a protective order required by § 18.2-60.4, shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

§ 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.
A. The unit owners’ association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner’s right to use facilities or services, including utility services, provided directly through the unit owners’ association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any suspension or charges may be imposed, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the charges or other sanctions actions that may be imposed taken by the unit owners’ association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address or addresses required for notices of meetings pursuant to § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.

C. The amount of any charges so assessed shall not exceed $50 for a single offense, or $10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner’s condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. The unit owners’ association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or duly adopted rules and regulations.

E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners’ association, by and through its counsel to collect the charges, or obtain injunctive relief and correct the
violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the unit owners' association's sworn affidavit.

G. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

§ 55-513. Adoption and enforcement of rules.
A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the association prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any such charges or suspension may be imposed action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the charges or other sanctions actions that may be imposed taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed $50 for a single offense or $10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges; or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

G. In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.
Assessment increase—you know they don't want it, but you know it is for their own good. These are your neighbors and it will make for unpleasant conversation at the next neighborhood party. This is the tough position boards have been dealing with for years. Consequently, for years, many boards have not made the right tough decisions. And now, for countless communities around this country, the house of cards has fallen, resulting in:

- Deferred maintenance has now caused higher repair costs because preventive maintenance was not done and can't be deferred anymore with property values plummeting.
- Operating expenses have soared due to extraordinary weather—snow, tornadoes, hurricanes, floods, causing huge operating losses.
- Foreclosures have dramatically increased resulting in significant bad debt and legal fees for the association and continued non-payment of assessments by banks.
- Third-party lenders—FHA, FNMA, Freddie Mac—have all stepped up their requirements concerning how associations manage their finances and protect their exposure.

- The poor financial condition of an association has affected the ability for an owner to sell their home in many areas, especially in a buyer's market.

Finally, the really tough part is telling your neighbors they have to pay more and part of that payment is to put away more funds for future expenses. For years, the funding of capital reserves for many communities was considered a slush fund for a rainy day, whose funding level was determined more by what was left over at the end of the year, if anything, than an intelligent analysis of needs. Because of this, special assessments have become all too prevalent to cover irresponsible financial management of past boards. Over the last several years, those independent professionals and legislators responsible for oversight of fiduciaries such as association boards have grown concerned over this trend and the exposure it leaves for current and future owners. This has resulted in legislation, audit standards and lender rules concerning disclosure of reserve funding and requirements to potential purchasers and current owners. Reserves must be a big part of the budget process.

I decided not to write this article as just another "how to" about budgeting. I have no sage advice for how to ease a board's burden. Let's face it; association budgeting for the most part is simple. Boards who find budgeting difficult are not struggling with the individual line items; they are understandably struggling with facing the music at the end. I don't mean to make light of this tough position. But if you can't handle it, you are not serving the best interests of the community as a whole. Ultimately, the board of directors has a fiduciary duty to assess sufficiently to provide necessary services. This limits the scope of board discretion.

So, what is a board to do then? First and foremost, the board must ascertain the current financial health of their association. Secondly, they must approach the budget process, not with a target assessment in mind, but rather from the expense side, including finding of reserves, resulting in a required assessment level. All too often boards have this reversed. Lastly, they must do everything in their legal power to trim the budget intelligently and responsibly, and then set assessments at the required level, even if it requires a vote of the owners or a special assessment. Not doing so just delays the inevitable, it does not eliminate it.
Here is a checklist of significant items to be scrutinized in the budget process, but often overlooked:

- With guidance from your accounting professionals, determine if you have accumulated losses from past year(s) that have not been recovered, resulting in negative members' equity. Members' equity sits on the balance sheet, in the equity section, and represents the accumulated net income since inception that has not been allocated to reserves. It is supposed to be positive. If it is negative, you must recover it in the budget process, by taking in enough extra income to cover the prior losses.

- Make sure you have liquid assets, namely cash and reliable receivables, to back the capital reserve levels stated in your equity section. Again, do this with guidance from your accountants. If you have operated in losses in the past that were not recovered, you will have difficulty reconciling this. This also holds true for large owner receivables and high potential for bad debt.

- Compare your capital reserve balance, on the balance sheet—equity section, with the required balance per the reserve study. Make adjustments to the reserve study figures to reflect work planned to be done but deferred. The cost of the deferred work therefore needs to be added back to the required balance. The budget process needs to take any shortage between the actual balance and the adjusted required balance and plan for recovery.

- Include a contingency factor in the budget. Whether you depict it as a line item or net income does not matter. The auditors like to see anywhere from 10 percent to 20 percent of assessments as your contingency factor, the variable depending on your expense vulnerability, such as heating costs, snow removal and so on.

- Lastly, when trimming your budget items do it with reality in mind, not just a target bottom line. If you are still going to have the same number of mailings, trimming your postage budget will not result in trimmed postage costs.

Finally, communication to the owners of all that you have learned in this budget process is key to their understanding of the conclusions the board has come to and hopefully support for the board’s actions.
Betsy Johns is a partner with National Realty Partners LLC, AAMC (NRP), Herndon, Va. She has been an association management company owner for 30 years, with a strong background in financial management and degrees in accounting and economics. She serves as co-chair of the Education Committee for WMCCAI, teaches seminars for related organizations, writes for various publications and enjoys being a guest on the cable TV program "Your Community Your Call."

Being a board member responsible for other people's money is a big responsibility no matter what the size of the community. The end game is being able to communicate to the members and to potential purchasers and mortgage lenders what the financial status of the association is and that all funds are accounted for and allocated properly. There are standards set for the format and terms used for stating the financial status and standards for best practices to avoid fraud. You don't have to be an accountant to be able to understand and put these standards to use, but you do need to have a system for doing so on a regular basis that can be documented and handed on to successor board members. Therefore, this article is directed to the nonaccountant, whether a board member or a manager and is at a very basic level to keep it simple.

First, let's start with a "glossary" of standard terms and what they really mean in the association world:

**Balance Sheet**—the statement that shows the current and complete picture of the financial status of the association. It shows assets on one side balanced by liabilities and equity on the other. Assets equal total liabilities and equity.

**Assets**—the cash accounts and the money owed to the association called accounts receivable.

**Liabilities**—funds owed to others by the association on the date of the report, typically the invoices received from vendors not yet paid, called accounts payable. This could include other liabilities such as the balance of a bank loan.

**Equity**—this is the section of the balance sheet that really shows the financial status of the association. It depicts the accumulated results of the financial operations from inception. All the net income for each year is closed out to unallocated member's equity/retained earnings and is cumulative. The assessments that were set aside for the capital and special reserves make up the other equity accounts. In the simplest of cases, if all members had paid all their assessments—no accounts receivable—and all bills from vendors were paid—no accounts payable—then the total cash would equal the total of the equity accounts.

**Income Statement/Profit and Loss**—shows the current fiscal year's income and expenses. The net result of income less expenses rolls up to the balance sheet, to the equity section. The income statement should show "accrued income" and "accrued expenses" by year end, to properly state the P&L according to American Institute of Certified Public Accountants (AICPA) standards.

**Accrued Income and Accrued Expenses**—means the assessments charged to owners, not necessarily collected. In other words, income is recorded when charged or earned, not when collected. The assessments charged but not collected yet become the accounts receivable on the balance sheet. Many associations who are self-run and some who are professionally managed keep their books on a "cash basis," (i.e. recognizing income when received and expenses when paid) but this is not according to AICPA standards and they will be paying their auditor to convert the financials to the accrual basis. Why do we use the accrual basis? One reason is because an association sets its assessment rate once a year, by projecting what the expenses are that will be incurred for the year's operations. To accurately show the results of those projections, the income statement, at least by year end, should include income as projected and show in expenses all the actual bills incurred, even if not yet paid. In this way income and expenses are more easily projected.
Drawing conclusions on the financial status of the association using the balance sheet and making plans to address problem areas is the board's and the manager's job together. Probably the biggest problem facing associations is the failure to make up for operating losses with additional assessments. How do you know if there has been a loss this year or in previous years? Simply put, the equity section of the balance sheet is not supposed to have any numbers with minus signs or parentheses. The net income from the P&L is supposed to be positive. If any of these numbers are negative you should speak to the manager and make sure you understand why and if there is a need for a course change in association spending, or worse, prepare for a special assessment. Further, if the cash account balances do not support the reserve account balances in the equity section, you most likely have accumulated losses—negative retained earnings/unallocated member's equity—or high accounts receivable. If the latter, steps should be taken to analyze the collectability of the accounts, and plan to reflect those deemed as uncollectible as a bad debt expense. No matter what, at budget time, the balance sheet should always be reviewed to make sure accumulated losses are made a part of the required funds needed for the next fiscal year.

Ascertaining the accuracy and completeness of the numbers presented to you by your treasurer or manager and being able to assure association members that you have a good watch over their funds is the final piece of this picture. And it is not enough to just say you know your fellow board members or management company and know they would not do anything unscrupulous or criminal, you must have knowledge of good internal controls over financial operations in all regards to prevent the potential for fraud.

If financials are a mystery to you, then this is probably the point where you throw up your hands. But it is not difficult if you follow these basic principles—this is not an all-inclusive list, but a good start:

- Have an audit done whether required or not by your governing documents. This will also protect you when a disgruntled member raises unsubstantiated charges of financial wrongdoing against you. Make sure to read the management recommendations letter that comes with the audit.
- Have a fidelity bond/crime policy covering all association funds and naming your management company as an additional insured.
- Make sure all bank accounts are reconciled to the bank statements and the board receives the statements and reconciliation every month.
- Receive monthly financial statements and read them. Make sure you understand the statements and that someone trained in accounting at the management company is reviewing the reports. Too many companies think user-friendly accounting software eliminates the need to have trained accounting staff and they allow the financial management services to run on autopilot.
- A board member, usually the treasurer, should be in charge of reviewing the detail behind all the numbers, or the general ledger, to make sure there are no errors and reviewing the list of checks written.
- Have controls over the bank accounts: no checks should be written to cash; at least two board members should be on association accounts along with management; reserve funds should be under the control of the board; watch for unexplained discrepancies with the bank and make sure the management company is not commingling client funds.
- Make sure there are no unexplained accounts on the financial statements.

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Audits and Insurance

Greater scrutiny is being paid to association audits by carriers providing Directors and Officers and Crime/Fidelity coverage to community associations. In most cases, underwriters are requesting not only the audit, but also the management letter which accompanies the audit.

Overall, the underwriting process includes a review of internal controls including countersignature for checks, separate individuals reconciling bank statements from those depositing funds and any use of programmers or computer software controls, and with some accounts, whether the annual audits are being performed by an outside certified public accounting (CPA) firm.

Financial audits are very important during the carrier underwriting process as they provide not only a financial picture of the association but how the internal processes are managed. For starters, carriers want to be sure the association has a solid financial background and the required reserve balances are fully funded. This gives the underwriters an indication of how the association revenues are being handled and whether obligations are being met. Part of the audit process includes any recommendations from the auditor. If there has been a recommendation made, it will be included in a letter to the board members outlining the auditors' findings. The letter will indicate whether the CPA found any material weaknesses or lack of internal controls. A full description of the issue will be included and a recommendation will be made to the board on how to correct these matters.

The overall underwriting process is designed to ensure that the association will implement the CPA's recommendations as outlined in the management letter as necessary and an annual underwriting review is necessary to confirm that these internal controls are continuing to be followed.