

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

Present

2011 Common Interest Community
Seminar

December 10, 2011

Sponsors



Law Office
of
William A. Marr, Jr. Esq.

Featuring

Delegate Tom Rust

**Betsy Johns, Partner, National
Realty Partners**

William A. Marr, Jr., Attorney

Charles Waddell, President, HCAC

Overview –
Common Interest Community Board

- Created in 2008 by House Bill 516 and Senate Bill 301
- Recommendation of the Housing Commission
- Collaborative effort:
 - Community Associations Institute
 - Virginia Association of Community Managers
 - Virginia Association of Realtors

Overview –
Common Interest Community Board (cont.)

- Eleven Member Citizen Board (appointed by Governor)
- Property Registration Programs
- Management Firm Licensure
- Management Firm Employee Certification
- Common Interest Community Ombudsman
- Resale – Condominium Unit Owners Associations and Property Owners' Associations
- Investigates and adjudicate complaints initiated by members against an association
- Administers recovery fund; reviews and adjudicates claims for recovery; power to take disciplinary action against managers

Citizen Board (Section 54.1-2348)

- Appointed by Governor
- 3 common interest community managers
- 1 community association attorney
- 1 community association accountant
- 1 representative of the time-share industry
- 2 developer representatives
- 3 citizens:
 - 2 residents
 - 1 current or former board member

Common Interest Community Board

- F. James Ahlberg, CPA
- Pamela S. Coerse, Time Share Industry
- Manager vacant
- Kimberly B. Kacani, Vice-Chair, Developer
- Douglas W. Rogers, Citizen
- Milton W. Matthews, Community Manager
- Christiaan Melson, Community Manager
- Miyun Sung, Citizen
- Lucia Anna Trigiani, Chair, Attorney
- Katherine E. Waddell, Citizen
- VACANT, Developer

Common Interest Community Board Staff

- Trisha L. Henshaw, Executive Director
- Thomas K. Perry, Property Registration Administrator
- Betty C. Jones, Administrative Assistant
- Lisa Robinson, Licensing Specialist
- Raymond West, Licensing Specialist

Common Interest Community Board

Areas of Authority:

- Licensing Management Companies
- Certification of Managers
- Training and Education
- Registration and Oversight of Associations
- Protection of Associations from Dishonest Managers
- Property Registration: Condominiums and Timeshares
- Setting and Collecting Fees

Common Interest Community Board Actions and Accomplishments

- Management Firm Regulations
 - Public Comment Taken Summer 2009
 - Regulations Became Effective April 1, 2010
- Ombudsman Regulations
 - Committee Drafted Regulations
 - Currently In Executive Branch Review Process
- Manager Certification Regulations
 - Committee Drafted Regulations
 - Currently In Executive Branch Review Process

2011 VIRGINIA LEGISLATIVE CHECKLIST

- Actions taken by the Virginia General Assembly to amend the laws that govern community associations have a direct impact on administration and governance of common interest community associations. The following checklist of actions your community association should have considered in order to prepare for the changes to Virginia laws that became effective July 1, 2011.

2011 VIRGINIA LEGISLATIVE CHECKLIST

- ✓ Review and revise procedures for use of common elements and common areas when alcohol is served to take into account changes in requirements for ABC banquet licenses.
- ✓ Develop and adopt a cost schedule for providing access to association books and records - publish no later than July 1, 2012. (*Note: the management company's cost schedule can be adopted*)

- ✓ Consider whether to take advantage of changes that allow the General District Courts to require abatement of violations of covenants and restrictions, rules and regulations.
- ✓ If a transfer fee is an option your community wants to explore, consider carefully the requirements for amending the governing documents.
- ✓ Ensure that a current annual report has been filed with the State Corporation Commission, if applicable, and the Common Interest Community Board.

- ✓ Develop a procedure for booking fees for the preparation of resale disclosure documents to an individual assessment account.
- ✓ Contact the association pest control or landscaping vendor to ensure notice of all pesticide applications on the common area is posted at least 48 hours prior to the application.
- ✓ Develop an internal complaint procedure in accordance with Common Interest Community Ombudsman Regulations.

In addition to statutory changes, Virginia common interest community associations must also be informed about regulatory changes.

Why Must We Have Complaint Regulations?

- **§55-530 E.** The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints.

Highlights from Draft Regulations

- **18VAC48-70-40** Requirement for association to develop an association complaint procedure
 - Each association shall have a written process for resolving association complaints from members and citizens
 - It shall conform with the requirements set forth in § 55-530, as well as the association governing documents, which shall not be in conflict with § 55-530 or this Chapter

Highlights from Draft Regulations

- **18 VAC48-70-20** “Adverse decision” or “Final adverse decision”
 - the final determination issued by an association pursuant to an association complaint procedure...
 - all avenues for internal appeal under the association complaint procedure have been exhausted...
 - the date of the final adverse decision shall be the date of the notice issued pursuant to 18 VAC 48-70-60.8 and 18 VAC 48-70-60.9

Highlights from Draft Regulations

- **18VAC48-70-50** Establishment and adoption of written association complaint procedure
 - Registered associations shall establish and adopt complaint procedure within 90 days of the effective date of this Chapter
 - Associations filing initial application for registration must certify complaint procedure has been or will be established and adopted by the governing board within 90 days of such filing
 - Associations shall certify with each annual report that the complaint procedure has been adopted and is in effect.

Highlights from Draft Regulations

- **18VAC48-70-70** Distribution of association complaint procedure
 - Must be readily available to all members of the association and citizens.
 - Shall be included as an attachment to the resale certificate or the association disclosure packet

Highlights from Draft Regulations

- **18VAC48-70-90** Failure of association to establish and utilize association complaint procedure
 - May result in the board seeking any of the remedies available pursuant to Chapter 23.3 of Title 54.1
 - Bring suit, intervene, cease & desist order, monetary penalty

Highlights from Draft Regulations

- **18VAC48-70-100** Filing of notice of final adverse decision
 - Shall be filed within 30 days of the date of the final adverse decision.
 - Shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:
 - Name and contact information of complainant;
 - Name, address, and contact information of association;
 - Applicable association governing documents; and
 - Date of final adverse decision.
 - Shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation, and a copy of the association complaint procedure.
 - \$25 filing fee or a request for waiver

Highlights from Draft Regulations

- **18VAC48-70-130** Decision from the notice of final adverse decision
 - If the Director determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the board
 - The determination is within the sole discretion of the Director
 - Such decision is final and not subject to further review
 - The determination of the Director shall not be binding upon the complainant or the association

Examples of Complaints That May or May Not be Within Scope of CIC

- Owner(s) requested a membership meeting be called to oust the current Board, followed procedure, and the Board declined.
- Owner complained Board & committees are not holding open meetings.
- Owner objected to special assessment passed with this year's budget saying the Board needed a vote of the owners and Board disagreed.
- Owner complained that the Board is not requesting 3 bids for every contract and they are required to do so. The Board disagreed.
- Owner complained that the pool guards were discriminating against his child, the Board disagreed.

What to Expect in 2012?

CAI's VALAC

- Community Associations Institute's Virginia Legislative Action committee (VALAC) needs your support to fulfill our mission and continue our success. The investment you have made in your home and community is one of your greatest investments, and the efforts of VALAC to protect that investment is one of the greatest benefits of CAI membership. VALAC is funded solely by Community Associations Institute CAI members' advocacy support fees and additional voluntary contributions of community associations, management companies and businesses that provide products and services to the community Associations.

WHAT DOES VALAC DO ?

- VALAC monitors legislation and proposes changes to pending and existing legislation that affects community associations and businesses that provide services to those communities.
- VALAC works year round, gathering information networking with legislator and monitoring trends in the common interest community industry. Even after the session concludes, the work of VALAC continues.

WHAT DOES VALAC DO ?

- VALAC is comprised of volunteer members from across the Commonwealth who are involved in all facets of the common interest community industry.
- VALAC hires lobbyists to meet with legislators to persuade them on the legislation that protects and enhances our community Associations.

VALAC Triumphs

- VALAC has enjoyed many triumph in effectuating change and clarity in our common interest community laws, including:
 - Preserving restrictive covenants by negotiating the language of bills addressing solar panels and clotheslines.
 - Protecting individual members of a board of directors from monetary penalties.
 - Preserving association rule making authority.
 - Providing efficient enforcement for associations by supporting the expansion of the jurisdiction of the General District court to abate violations.
 - Advocating limitations on liability for injuries in storm water facilities.

VALAC Triumphs

- VALAC has enjoyed many triumph in effectuating change and clarity in our common interest community laws, including:
 - Saving association money by promoting the use of new technologies for notice, voting and governing document amendments.
 - Increasing the knowledge and professionalism of associations by supporting education and licensing of common interest community managers.
 - Maintaining the value of communities by preserving the assessment authority of property owners associations.
 - Education potential buyers about the community by working to ensure full disclosure upon resale of properties in community associations.

Legislative Issues for 2012

- The 2012 legislative session promises to be busy. Issues that may be addressed include:
 - The impact of bank owned properties, foreclosures and abandoned homes and condominiums on property owners associations
 - Whether Declarants in POA communities should be required to turn over control of the association at a particular time.

HOW can you help VALAC?

- VALAC needs the support of all community associations and those management companies and businesses who work with them. Community associations can consider making a contribution to go directly and exclusively to VALAC. Associations may show support by budgeting any amount per door to contribute to VALAC.
- Donation forms may be requested.

Recent Changes With Federal Housing Administration (FHA)

- FHA insures loans made by private lenders 5% in 2007 to presently 25% of all mortgages nationwide
- Allow for lower down payments and lower credit score requirements
- Individual "spot loan" approval discontinued so associations must obtain condominium project approval

Recent Changes with FHA financing

- FHA issues guidance outlining requirements for condominium projects
- Increased popularity of FHA backed loans resulted in more stringent requirements for associations

Recent Changes with FHA financing

- No more than 15% units may be delinquent more than 30 days
- Includes bank owned units
- Exceptions may be made to allow 20% delinquency rate if certain thresholds are met; including evidence funds available to cover delinquencies (“allowance for bad debt”), recent reserve study, 6 month report on delinquencies

Recent Changes with FHA financing

- Fidelity bonding of management company
- Special assessments – submission of information of its purpose and expected impact on the value and marketability of the project

Recent Changes with FHA financing

- Applications must be certified by Association representative that:
 - Project meets all state and local condominium laws and FHA condominium approval requirements
 - Information contained in application is true and correct
 - Submitter has no knowledge of circumstances that would have adverse effect on project or cause unit owner to become delinquent on mortgage. *For example: unit owner dissatisfaction with operation of Association, defects in construction, disputes about rights and privileges.*

Recent Changes with FHA financing

- Submitter is under continuing obligation to inform HUD if material information on application is no longer true
- Criminal penalties available for knowingly or willingly providing false information
 - up to \$1,000,000 fine
 - up to 30 years in prison

Recent Changes with FHA financing

- Associations need to complete a cost/benefit analysis of applying for FHA certification
- Analyze costs for applying for certification – estimated between \$3,000-\$6,000.
 - Attorneys fees
 - Accountant fees
 - Manager fees

Recent Changes with FHA financing

- Measure chance of obtaining FHA certification
 - Delinquency rate
 - Adequacy of budgeted reserves
 - Percentage of rental units (50%)
 - Single owner percentage limit (10%)
 - Special assessments

How Will FHA Certification Effect Associations?

- Need to consider impact upon Association members in obtaining FHA certification
- Will assessments increase
 - Are amendments to governing documents needed
 - No guarantee all borrowers can obtain FHA financing
 - Who will be willing to assume liability for certification/signing?

How does all of this effect Associations?

- Is your management company properly licensed and certified?
- If not, will they meet the requirements by June 30, 2012?
- Does your managing agent carry the correct fidelity bond/ policy coverage?

How does all of this effect Associations?

- Does your managing agent update your Employee Dishonesty coverage amounts yearly?
- Is the managing agent listed as a named insured under the HOA/Condo policies?

How does all of this effect Associations?

- New Policy resolutions needed by all HOA/ Condo' s:
 - An internal complaint policy with information concerning the ability to go to the Ombudsman AFTER a final adverse decisions by the Association Board of Directors. *(Note this is different from the "Due Process Resolution")*

How does all of this effect Associations?

- By July 1, 2012 adopt a resolution, setting out the charge for access to books and records, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with Code.

Association Checklist for Compliance

Highpoints of Legislative Requirements in recent years:

- ✓ Association Registration/annual DPOR report and fee
- ✓ Fidelity Bond covering Board and management
- ✓ Reserve Study every 5 years, annual update
- ✓ Management Company Licensed
- ✓ Resale/Disclosure Packages Provided to Purchasers
- ✓ Formal Homeowner Complaint Process
- ✓ Formal Resolution for Access to Books and Records and Costs thereof
- ✓ *Note: this list is not meant to be all inclusive- See POA Act and Condo Act for further information*

Questions and Answers

Speakers' Biographies

Betsy Johns, Partner & VP/Controller of National Realty Partners LLC, CMCA®, AMS®

Betsy Johns is a partner with National Realty Partners (NRP), located in Herndon, VA, which, among other services, manages homeowner and condominium associations. She is the former founder and president of AMSi which merged with NRP in 2008. For the past 30 years, she has been a management company owner providing management services to both commercial and residential associations. She has degrees in economics and accounting from Holy Cross College, and worked for 2 of the "Big 8" CPA firms prior to entering the community association field.

Ms. Johns is an active volunteer in the association management industry, frequently serving as a writer and speaker for educational programs, as a guest speaker on the Fairfax County program "Your Community Your Call", as a co-founder of the Herndon Community Association Coalition (HCAC) and as co-chair of the Washington DC Chapter of the Community Associations Institute (CAI) Education Committee, and various other volunteer activities.

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Speakers' Biographies

WILLIAM A. MARR, JR.

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.

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Resources for Association Leaders

- Community Associations Institute "CAI"
 - CAIOnline.org for National
 - CAIDC.org for Local Chapter
- Herndon Coalition of Community Associations "HCAC"
 - hcac-va.org
- Fairfax Cnty HOA & Condo Assn Liaison
 - michelle.thompson@fairfaxcounty.gov
- Delegate Tom Rust
 - TomRust.org