



WHITEFORD

June 13, 2023

Brandermill Community Association, Inc.

Covenants Re-Write Project

TOPICS

1. Governance and Management
2. Evolution of Property Owners' Associations
3. Covenants Re-Write Committee
4. Overview of Proposed Amendments
5. Other Ideas and Concerns
6. Questions and Comments

Governance and Management

Principal Statutes

- 1. Property Owners' Association Act – Va. Code Ann. §§ 55.1-1800 through 55.1-1836**
- 2. Virginia Nonstock Corporation Act – Va. Code Ann. §§ 13.1-801 through 13.1-946**
- 3. Common Interest Communities – Va. Code Ann. §§ 54.1-2345 through 54.1-2354.5**

Definitions

Property Owners' Association Act - Va. Code Ann. § 55.1-1900

1. Property Owners' Association

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

2. Declaration

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

3. Common Interest Community Manager

means the same as that term is defined in Virginia Code § 54.1-2345.

Definitions

Virginia Nonstock Corporation Act - Va. Code Ann. § 13.1-803

1. Corporation or Domestic Corporation

means a corporation not authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or that, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth or that has become a domestic corporation of the Commonwealth pursuant to Article 11.1 (§ 13.1-898.1:1 et seq.).

2. Board of Directors

means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

Definitions

Common Interest Communities – Va. Code Ann. § 54.1-2345

1. Common Interest Community

means real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § 54.1-2345.1.

2. Common Interest Community Manager

means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

3. Management Services

means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

BCA Organizational Documents

1. Articles of Incorporation

Restatement of Articles of Incorporation Brandermill Community Association, Inc. – April 19, 1993

2. General Covenants

Third Amendment by Restatement of Declaration of Covenants and Restrictions of Brandermill Community Association, Inc. was adopted on April 20, 1993 (later amended)

Declaration - Single Family Covenants

Declaration - Garden Home Covenants

Declaration - Multiple Family Covenants

3. By-Laws

By-laws of the Brandermill Community Association, Inc.

Basics of Property Owners' Associations

- 1. Mandatory Membership**
- 2. Power to Regulate**
- 3. Power to Tax**
- 4. Protection of Assets of Others**
- 5. Provision of Services**

Purposes and Powers

Articles of Incorporation – Article II

1. To own, hold, manage and care for the Common Properties (as defined in the Declaration).
2. To enforce the covenants, restrictions, easements, charges, rules and regulations as provided in the Declaration.
3. To assess, collect and disburse the charges dues from the members to the Corporation.
4. To acquire, own, hold, improve, build upon, sell, lease, transfer, mortgage, encumber, dedicate for public use or otherwise and dispose of real or personal property in connection with the affairs of the Corporation but only in accordance with the purposes of the Corporation.
5. To do any acts and all things that the Corporation may deem to be for...
 - A. The benefit of the Properties, Owners and inhabitants; and
 - B. Proper or convenient for the promotion of peace, health and comfort, safety or general welfare of the Owners and inhabitants.
6. Corporation has all powers, rights and privileged to conduct any and all business of a corporation organized under the Virginia Nonstock Corporation Act subject to the limitations set forth in this section.

Governance ≠ Management

Board of Directors

1. Sets policies,
2. Approves budget,
3. Oversight of finances,
4. Promulgate rules,
5. Enforce covenants, rules and restrictions,
6. Hire contractors, manager and professionals, and
7. Oversight of property.

Community Manager

1. Implements policies,
2. Handles day-to-day operations and affairs,
3. Manages budget and finances, and
4. Manage and oversee contractors, professional and vendors.

Evolution of Property Owners' Associations

VIRGINIA
COMMUNITY ASSOCIATIONS
FACTS & FIGURES

Approximately 2,010,000 Virginians live in 786,000 homes in more than 8,890 community associations.

| 89% | say their association's rules protect and enhance property values (68%) or have a neutral effect (21%).

| 74% | of residents oppose additional regulation of community associations.

| 89% | of residents rate their community association experience as positive (67%) or neutral (22%).

| 84% | say they always or usually vote in state and local elections. 86% vote in national elections.

By 2040 the community association housing model is expected to become the most common form of housing.

These residents pay \$3.7 billion a year to maintain their communities. These costs would otherwise fall to the local government.

66,900 Virginians serve as volunteer leaders in their community associations each year, providing \$79.2 million in service.

The median home value in Virginia is \$264,900. Homes in community associations are generally valued at least 4% more than other homes.

Community associations, also known as homeowners associations, condominiums, housing cooperatives, common interest developments, and planned communities, are neighborhoods where homeowners share responsibility, ownership, rights, and use of common amenities, facilities, and space. Community associations are created, governed, and managed by state statutes. State statute provides for neighbors to elect neighbors to manage the administration and operations of the community.

Community associations are the financial engine of the community. The financial engine of the community is based on mandatory assessments paid by every homeowner to cover the costs of conducting association business—such as common area maintenance, repair and replacement, essential services, routine operations, insurance, legal compliance, landscaping, facilities maintenance as well as savings for future needs.

CAI supports public policy that recognizes the rights and responsibilities of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

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Legislative Changes

- 1. Virginia General Assembly legislates on matters affecting community association governance almost every year.**
- 2. Examples of Statutory Changes Include:**
 - Association Charges, Assessments, Special Assessments and Late Fees
 - Dissemination of Annual Budget and Reserves
 - Access to Books and Records
 - Board and Members Meetings
 - Use of Technology, Virtual Meetings and Voting
 - Distribution of Information By Members
 - Adoption and Enforcement of Rules and Regulations
 - Home-Based Businesses
 - Display of Flag of United States
 - Solar Energy Collection Devices and Electric Vehicles Supply Equipment
 - Housing Discrimination
 - Common Interest Community Managers
 - Disclosure Packets
 - Real Estate Signs
 - Limitations on Smoking

The Virginia Courts & Restrictive Covenants

1. Virginia courts have consistently applied the principle of strict construction to restrictive covenants.” Tvardek v. Powhatan Village Homeowners Ass’n, 291 Va. 269, 275 & n.2 (2016)
2. The general rule is that restrictive covenants “are not favored, and the burden is on [the party] who would enforce such covenants to establish that the activity objected to is within their terms.” Scott v. Walker, 274 Va. 209, 212-13 (2007)
3. Restrictive covenants “are to be construed most strictly against the grantor and persons seeking to enforce them, and substantial doubt or ambiguity is to be resolved in favor of the free use of property and against restrictions.” Scott v. Walker, 274 Va. 209, 212-13 (2007)
4. Virginia courts should “enforce restrictive covenants where the intention of the parties is clear and the restrictions are reasonable” and “if it is apparent from a reading of the whole instrument that the 7 restrictions carry a certain meaning by definite and necessary implication.” Shepherd v. Conde, 293 Va. 274, 288 (2017) (emphasis added) (citations omitted).

Covenants Re-Write Committee

The Challenge

- 1. The Committee is tasked with reviewing, assessing and recommending amendments to the BCA's Residential Organizational Documents with overall goals of:**
 - tailoring the Residential Organizational Documents in a manner that is designed to fit the living experience of owners, tenants, residents, and occupants,
 - eliminating conflicts of laws and obsolete provisions,
 - promoting cost-effective and efficient governance,
 - ensuring that the collective rights and interests of owners are respected and preserved, and
 - generally making the Residential Organizational Documents, to the extent possible, more “user friendly”, and adaptable to the ever changing and evolving laws and regulations governing POAs.
- 2. Enable Members to Make Informed Decisions About Proposed Amendments to the Organizational Documents.**
- 3. Committee Started with the General Covenants**

Membership, Voting and Governance

1. Proposed Changes Include:

- Removing the tenants from the Class “A” membership,
- Clarifying Member Voting Rights,
- Incorporating Voting Procedures to provide more voting procedures options, and,
- Uniform Member Voting Requirements.

Finances

1. Proposed Changes Include:

- More Clearly Defining the Purpose and Use of Assessments
- Monetary Charges
- Reserved Recreational Uses

Property Rights and Architectural Covenants

1. Proposed Changes Include:

- Use of the Common Properties
- Delegation of Property Rights
- Architectural Covenants – More Well Defined and Consistent Practices and Procedures

Enforcement

1. Proposed Changes Include:

- Administrative Options
 - Monetary Charges
 - Suspension of Privileges
 - Self-Help and Abatement
 - Due Process

Other Ideas and Concerns

Questions and Comments

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