Defending Regulatory Complaints Under the Common Interest Community Board Regulations

Webinar – September 16, 2009
12:00 pm – 1:00 pm
Welcome. With the high number of attendees, please note all lines have been muted for the event. Q&A can be posted at the right of your screen, but any questions (time permitting) will be addressed at the end of the event. If using Q&A – please send to both the host and the presenter. You can send direct questions (including requests for a copy of the slides) to seminars@leclairryan.com with “Community Associations Webinar” in the subject line after the event.
Look for invitation on

Community Association Board Meeting Minutes –
Minimizing the Legal Risks

Wednesday, October 7, 2009 – 12:00 - 1:00 pm
(or register at leclairryanevents.webex.com)
First, Some Terminology...

- We use “Community Association”
- The State uses “Common Interest Community”
- Can generally be used interchangeably – we will use both today
- Both terms are inclusive of Condominium Associations
Why this topic?

Things have changed...
The Way We Were. . .

Life before the establishment of the Common Interest Community Board ("CIC Board")
Prior to the CIC Board and new law

- Common Interest Communities were not regulated by the Department of Professional and Occupational Regulation (DPOR)
- Property Managers were not regulated by DPOR (did not have to be licensed)
- Statutes were there – but not much teeth
- Aggrieved owners forced to take grievances to court and incur the cost of litigation
So, what’s changed?

- New statute and regulations govern Common Interest Communities and Property Managers
- Communities and Managers must register with the DPOR
- Managers must be licensed with DPOR
- Complaint mechanism established – easy and cost-free for owners to file CIC Board Complaints
- Serious penalties (including criminal) for non-compliance and/or violations
Common Interest Community Board ("CIC Board")
Common Interest Community Board
The Statutes:

- Virginia Code § 54.1-2345 et seq.
- Property Owners’ Association Act § 55-508 et seq.
- Condominium Act § 55-79.39 et seq.
- Virginia Nonstock Corporation Act § 13.1-801 et seq.
- Real Estate Timeshare Act § 55-360 et seq.
- Real Estate Cooperative Act § 55-424 et seq.
Common Interest Community Board

The Regulations:

- Common Interest Community Manager Emergency Regulations 18 VAC 48-50-10 et seq. (Effective November 13, 2008)
- Condominium Regulations 18 VAC 48-20-10 et seq. (Effective July 9, 2009)
- Common Interest Community Management Fund Regulations 18 VAC 48-60-10 et seq. (Effective May 15, 2009)
- Virginia Time-Share Regulations 18 VAC 18-40-10 (Effective November 27, 2008)
Website:

http://www.dpor.virginia.gov/dporweb/cic_main.cfm
Common Interest Community Board

Background:

- CIC Board was created by HB 516 and SB 301 passed April 23, 2008 (became law July 1, 2008)
- Regulates Common Interest Communities, Managers, and their supervisory and managerial employees
- Regulates the sale of new condominiums and time-shares
- Required to meet at least 4 times per year
- Has met 22 times in the past year!
- Work is ongoing
Common Interest Community Board

Background (cont’d):

- CIC Board is a “policy board” and a “regulatory board” administered by DPOR
- Its 11 members are appointed by the Governor
- Law created the Management Recovery Fund to protect the interests of Associations
- Ombudsman position created to assist the public and receive notices of complaints filed
CIC Board Complaints
A Case Study
A local Association asked our assistance in defending a complaint

An Owner submitted a complaint to the CIC Board after being denied a hardship exception to the Association’s limitation on rentals (“rental cap”)

The Owner was in the military and fit within the hardship exception

The Board of Directors used its discretion to deny the request for a hardship exception
CIC Board Complaints: A Case Study - Background

- The Owner had unsuccessfully appealed the decision to the Board of Directors several times.
- The Owner filed a CIC Board complaint from his duty station overseas.
- The Board of Directors was extremely alarmed upon receiving the complaint.
CIC Board Complaints: A Case Study – Case Strengths

- The Board of Directors appeared to have acted within its discretion in denying the hardship exception
- The amendment at issue was properly adopted and recorded
- The Association and Manager had properly documented dispute and the documentation told the story
CIC Board Complaints: A Case Study – Case Weaknesses

- The owner was in the military, overseas, with a sympathetic story
- Reasonable minds could differ regarding the reasonableness of the hardship request denial
- The complaint involved a rental restriction, a tricky area of the law
CIC Board Complaints: A Case Study: The CIC Board’s Decision

• The CIC Board found in favor of the Association

• The Findings:
  • The Board of Directors was under no obligation to grant the hardship exception
  • No finding of any instances of legal or regulatory violation on the part of the Board of Directors
  • No violation of the Governing Documents of the Association
  • The rental restriction appeared to the Ombudsman to be reasonable (although a reasonableness determination can only be made by a court)
  • The CIC Board will take no further action on this matter
CIC Board Complaints: A Case Study: If we had not prevailed

- Notice of complaint from DPOR/CIC Board explained the process
- If probable cause to support a violation – file is processed for further disciplinary action
- Determination of violation may be accomplished through:
  - Consent Agreement
  - Consent Order
  - Informal Fact-Finding Conference
- CIC Board authorized by law to impose sanctions and other penalties
CIC Board Complaints
Lessons Learned
CIC Board Complaints: Lessons Learned

- An ounce of prevention is worth a pound of cure:
  - Have sound governing documents that comply with law
  - Be reasonable and use common sense
  - Be consistent in the application of covenants and rules
  - Be fair
When Your Association Receives Notice of a Complaint
When you receive notice of a CIC Board Complaint

- Do:
  - Notify Association legal counsel immediately
  - Provide to legal counsel copies of all correspondence from the CIC Board and all other relevant documentation
  - Direct all phone calls/correspondence from the CIC Board to legal counsel
When you receive notice of a CIC Board Complaint

- **Do:**
  - Reexamine your position and/or the decision that gave rise to the complaint – was it reasonable?
  - If not, legal counsel may recommend that the Board of Directors reexamine its position if appropriate and feasible to avoid a costly defense
When you receive notice of a CIC Board Complaint

- Don’t:
  - Engage the complainant – especially in writing!
  - Have conversations or exchange emails with the complainant – treat the complaint like litigation
  - Discuss the complaint with Association members
This is a lot of information. . .
What can I do today?

Go for the low-hanging fruit
What you should do now - Directors

- Read your documents – know your documents
- Read the statutes and regulations, prior existing and new
- Confirm with the CIC Board that your Association’s registration is current
- Perform due diligence – ensure your management company and manager are licensed, registered, and in compliance
What you should do now – Directors (cont’d)

- Be proactive – spot potential problems and resolve them quickly and fairly
- Keep documentation of all interactions with Owners (letters, emails, office visits, call logs)
What you should do now - Managers

- Read the statutes and regulations, prior existing and new
- Confirm with the CIC Board that your management company’s registration is current
- Perform due diligence – ensure supervisory employees are properly licensed (provisional at a minimum)
- Check the registration status of the Associations you manage
What you should do now – Managers (cont’d)

- Help your Associations spot potential problems
- Keep detailed records of interactions with Owners
Q & A
A Reminder:
Community Associations Webinar Series

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