

## PRACTICE AREA

# HOA/CONDO GOVERNANCE

The attorneys at Pender & Coward, P.C. are authorities on Virginia HOA governance and Condo governance. We have the knowledge and experience to provide exceptional legal counsel for both residential and commercial cooperative common interest communities. We assist residential condominium and property owners' associations, their boards, and their members with a variety of legal issues, including helping associations through the transition of builder turnover, enforcing covenants, conducting meetings, drafting and reviewing documents, defining rules and regulations, collecting assessments and fines, and resolving disputes. Additionally, our attorneys provide training for management companies.

### Enforcing Covenants and Rules

Our experienced community association attorneys assist property management companies and community associations to assure the association is enforcing the association's covenants and rules. Our attorneys work with managers and boards to evaluate the best enforcement strategy for their particular HOA or Condo. This includes reviewing, updating, and drafting effective enforcement and fine policies and procedures to ensure fair, uniform, and consistent treatment of the members. Our team will diligently remain current regarding ever changing Virginia law and the enforcement rights provided under the association's governing documents. This allows us to effectively enforce proper compliance regarding architectural guidelines, pet rules, lease violations, removal of unapproved structures, proper maintenance of properties, nuisance behaviors, and other violations.

### Defining Rules and Regulations

The board of directors has the sole authority to establish, adopt, and enforce rules and regulations regarding the use of common areas within a community association. Our team of experienced community association attorneys assist property management companies and boards of directors to assure the association is complying with Virginia law and properly defining its rules and regulations so that everyone will know where they stand, there will be no miscommunication or confusion, and every member will be treated without bias. Our attorneys regularly counsel boards of directors on proper governance and best practices for ensuring compliance with community association rules and regulations including rules regarding solar energy collection devices, electrical vehicle charging stations and pets. We have extensive experience in preparing rules and regulations that meet the specific needs of each association and updating outdated rules and regulations to make them clear, concise and easier to understand and enforce.

### Collecting Assessments and Fines

Our team of experienced community association attorneys is aggressive and strategic in collecting assessments and fines. Assessments are generally an association's sole source of revenue which are needed to maintain

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property values. Our attorneys have invested significant resources in technology and staff with the goal of recovering the association's delinquencies in a timely and cost-effective manner. This includes drafting demand letters, negotiating payment plans, obtaining money judgments, and seeking post-judgment remedies including garnishment of wages and bank accounts and levies. We offer counseling to the association on recording liens on property for unpaid assessments and will work with the association through foreclosure and bankruptcy proceedings. We can also assist the association with creating a customized and effective assessment recovery policy.

## Resolving Disputes

Our experienced community association attorneys have extensive experience handling disputes between the rights of the association and rights of the homeowner. Our attorneys regularly represent associations in resolving disputes between individual property owners and the association regarding the architectural requirements in the associations' governing documents. These disputes usually involve owners who violate the association's architectural requirements by failing to submit an application for approval to the board of directors or the association's architectural committee or who violate the association's rules, regulations and guidelines by failing to ensure that their construction project complies with the association's covenants. We have successfully resolved these disputes prior to the association having to seek court intervention. When a resolution cannot be reached by agreement between the association and homeowner, we have successfully pursued litigation through the courts.

What is the role of an HOA/Condo board? A common interest community association is run by an HOA/Condo board of directors that is elected by the homeowners to oversee and protect the common assets of the association, manage its finances, enforce its covenants, and preserve its property values. Members of the board of directors are fiduciaries who must act in good faith and make decisions based on the best interests of the entire community. They must set aside all personal biases.

How do HOA/Condo covenants and rules get enforced? The governing documents of the association give the HOA/Condo board the duty and responsibility to enforce the covenants, rules, and restrictions of the community. The primary way in which the HOA/Condo board enforces its covenants and rules is through the imposition of monetary fines. Depending on what the association's governing documents authorize, the HOA/Condo Board may be able to suspend an owner's privileges, including the right to vote and the right to access and use of community amenities. Finally, an HOA/Condo board may enforce its covenants, rules and regulations by filing an enforcement action in court to gain compliance through an injunction order from the court.

What are the consequences of not paying HOA/Condo assessments? All homeowners within a common interest community are obligated to pay their portion of the HOA or Condo expenses. The association has the power to assess late fees and interest on any unpaid assessments. If the association is forced to seek court intervention, most associations are allowed to charge the delinquent homeowner for its reasonable attorney's fees and costs

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in collecting the unpaid assessments. Some governing documents allow the HOA/Condo board to prohibit a homeowner from using common amenities until all assessments are paid in full. Additionally, Virginia law and most governing documents give the HOA or Condo the right to place a lien on a delinquent homeowner's property and, ultimately, foreclose on the lien if the assessments are not paid in full.

What are the common disputes that arise in HOA/Condo communities? There are a variety of disputes that may arise in the community association arena. A dispute may arise when the HOA or Condo attempts to impose a rule that is not actually included in the association's covenants. Disputes also arise when injuries are sustained on the property due to alleged negligent maintenance of the common areas and when members of the association believe the association funds are being mismanaged. It is also common for disputes to arise between boards and contractors concerning vague or ambiguous contracts or for negligent work. Probably the most common type of dispute involves disputes between two neighbors who are both members of the association and between members and the board.

The attorneys at Pender & Coward, P.C. have established a reputation as leaders in HOA governance and Condo governance. When representing residential condominium associations, cooperative homeowners' associations, developers, and owners of units and lots within deed-restricted communities, our attorneys respond quickly and economically to the ongoing issues that arise. We fully understand the budget constraints faced by most community associations and realize that legal fees must be reasonable and transparent. Our goal is to provide affordable legal advice in an efficient manner.

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