

MERCERTRIGIANI

AUTHORITY TO ADOPT AND ENFORCE ASSOCIATION RULES AND REGULATIONS

A growing number of Virginia court rulings have addressed the authority of common interest community associations to adopt and enforce rules and regulations. These rulings are significant and must be considered when developing and enforcing rules.

RULE ADOPTION

In an August 2019 opinion in the case *Sainani v. Belmont Glen Homeowners Association, Inc.*, the Virginia Supreme Court held that a rule restricting seasonal decorations promulgated by a Virginia property owners association was unenforceable because the rules exceeded the scope of, and were not reasonably related to, the restrictive covenants contained in the declaration.

The rule at issue in *Belmont Glen* established specific time periods during which seasonal and holiday decorations could be displayed and required homeowners to apply to the association architectural review board for approval to display decorations for any other celebrations. The rule also required homeowners to turn lights off by midnight. Following a strict construction approach, the Court evaluated the covenants relied upon by the association in evaluating whether the association had authority to adopt the seasonal decorations rule. Ultimately, the Court determined that the covenants did not establish authority in the association to adopt the rule restricting seasonal decorations.

While the *Belmont Glen* decision is based on particular facts and circumstances, the trend in Virginia continues to be strict construction – common interest community associations may promulgate rules *only* to the extent *expressly authorized* in recorded covenants. In other words, community associations may only adopt rules that are authorized by clear, express language in recorded documents.

ENFORCEMENT

Authority of community associations to enforce governing documents also has received increasing scrutiny, starting with a July 2010 Fairfax County Circuit Court opinion involving a townhome community called Olde Towne Belhaven. In the *Olde Towne Belhaven* case, a lot owner challenged the authority of a property owners association to impose and collect charges under Section 55.1-1819¹ of the Virginia Property Owners' Association Act. The Fairfax court determined that the association was without authority to assess charges because the recorded declaration did not establish such authority to assess charges. The case was not appealed to the Virginia Supreme Court.

In September 2011, the Loudoun County Circuit Court in *Lee's Crossing Homeowners' Association v. Zinone* interpreted Section 55.1-1819 of the Property Owners' Association Act as establishing board authority to adopt rules permitting the board to impose and collect monetary charges regardless of specific authority in the recorded governing documents. The Loudoun court specifically disagreed with the ruling in the *Olde Towne Belhaven* Fairfax Circuit Court case.

¹ The statutory references to sections of the Virginia Property Owners' Association Act and Condominium Act are to the recodified sections in Title 55.1.

Meanwhile, Fairfax Circuit Court had occasion to address association authority to assess violation charges again in May 2011, this time the practices of a Fairfax County condominium named Shadowood. As in *Olde Towne Belhaven*, where the court reviewed Section 55.1-1819 of the Property Owners' Association Act, the court in *Shadowood* considered whether Section 55.1-1959 of the Virginia Condominium Act established association authority to impose charges for non-compliance absent express authority in the condominium instruments. The Fairfax Circuit Court again ruled that Section 55.1-1959 of the Virginia Condominium Act did not establish charging authority – specific authority to assess charges must be in the recorded condominium instruments.

Unlike the *Olde Towne Belhaven* and *Lee's Crossing* cases before it however, *Shadowood* was appealed to the Virginia Supreme Court. In June 2012, in an unpublished decision, the Virginia Supreme Court affirmed the Fairfax Circuit Court ruling. In an opinion footnote, the Court offered the following: “by its plain terms, the statute is permissive in nature; it does not confer authority to an association beyond that in the association’s governing documents.”

The *Shadowood* ruling is only binding on the Shadowood Condominium Association, and the decision has limited application otherwise because the decision is unpublished and the language of concern is in a footnote. However, the *Shadowood* ruling offers insight on how the Virginia Supreme Court may interpret provisions of the Condominium Act and Property Owners' Association Act in the future.

CONCLUSION

Strictly interpreted, these court rulings lead to a conclusion that an association may adopt rules and impose sanctions *only* when the recorded governing documents expressly authorize an association to do so. It is recommended that all community associations take care to review due process procedures and adopted rules and regulations, particularly architectural guidelines, to ensure that Board-adopted governing documents are based on proper authority.