

**Education Series for  
Community Associations:  
Recodification, Reserves and  
aRchitectural Review**

*with*  
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**RECODIFICATION**

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**Title 55**

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- Contains laws addressing **property**
- First adopted in 1950
- Chapters added and repealed
- Organization scheme *compromised*

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**Virginia Code Commission**

- Established in Code of Virginia
- 11-13 members - Representing
  - Senate
  - House of Delegates
  - Judiciary
  - Non-legislative citizens

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**Commission Objectives**

- Organize laws more logically
- Remove obsolete and duplicative provisions
- Improve structure and clarity of real property statutes

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**Title 55.1 Overview**

- Senate Bill 1080 (Senator Edwards)
- Effective **October 1, 2019**
- *NO SUBSTANTIVE CHANGES*

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**Title 55.1 Overview**

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- **Five Subtitles**
  - Property Conveyances
  - Real Estate Settlements and Recordation
  - Rental Conveyances
  - **Common Interest Communities**
  - Miscellaneous

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**Common Interest Communities**

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- Chapter 18 – Property Owners’ Association Act
- Chapter 19 – Condominium Act
- Chapter 20 – Horizontal Property Act
- Chapter 21 – Real Estate Cooperative Act
- Chapter 22 – Real Estate Time-Share Act
- Chapter 23 – Subdivided Land Sales Act

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**Property Owners’ Association Act**

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- **Article 1** – General Provisions
- **Article 2** – Disclosure Requirements; Authorized Fees
- **Article 3** – Operation and Management of Association

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**Condominium Act**

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- **Article 1** – General Provisions
- **Article 2** – Creation, Alteration and Termination of Condominiums
- **Article 3** – Management of Condominium
- **Article 4** – Administration of Chapter; Sale, Etc. of Condominium Units
- **Article 5** – Disclosure Requirements; Authorized Fees

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**Citing Recodified Statutes**

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- **Property Owners' Association Act**
  - Old Citation – Section 55-508 *et seq.*
  - New Citation – Section 55.1-1800 *et seq.*
- **Condominium Act**
  - Old Citation – Section 55-79.39 *et seq.*
  - New Citation – Section 55.1-1900 *et seq.*

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**RESERVES**

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**Reserve Overview**

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- **Statutory Requirements**
  - Reserve Study Requirements
  - Disclosure Requirements
- **CICB Reserve Study Guidelines**

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**What is a Reserve Study?**

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Capital budget **planning tool** used to determine the physical status and repair or replacement cost of **capital components** and an analysis of an association’s funding capacity to maintain, repair and replace capital components.

Guidelines for the Development of Reserve Studies for Capital Components, Adopted by the Common Interest Community Board September 5, 2019.

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**Why a Reserve Study?**

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- Not a spending plan.
- Not a prescription for the community.
- Provides a rational basis for budget planning.

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*The Board is the only entity that has the authority to decide on funding reserves.*

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**Reserve Study Requirements**

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**Governing Statutes**

- Condominium Act -  
Section 55.1-1965
- Property Owners' Association Act -  
Section 55.1-1826

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**Reserve Study Requirements**

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- Conduct a reserve study “*at least once every five years.*”
- Review reserve study results “*at least annually to determine if reserves are sufficient.*”
- Make any adjustments deemed necessary to maintain reserves.

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**Budget Disclosure Requirements**

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- **Statement 1** – Describing procedures for estimate and accumulation of cash reserves pursuant to reserve study.
- **Statement 2** – Amount of reserves recommended by reserve study.
- **Statement 3** – Amount of current cash for reserves.

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## CICB Reserve Study Guidelines

### Legislation

- House Bill 2030 & Senate Bill 1538 – enactment clause.
- CICB directed to  
*Develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.*

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## CICB Reserve Study Guidelines

### Content

- Summarizes law addressing reserves
- Breaks down reserve studies
  - Physical Analysis
  - Financial Analysis
- Recommendations
- Glossary Appendix

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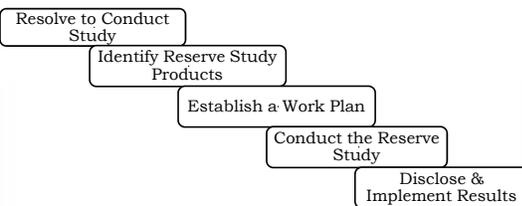
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## Steps to Provide for Adequate Reserves



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### **Performing the Reserve Study**

- Gather information
- List reserve components
- Physical inspection
- Cost estimates and service lives
- Funding analysis
- Management and Board Review
- Communicate results to community

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### **Information Needed by the Reserve Analyst**

- Basic property information - number of units, year property built
- Chart of maintenance, repair and replacement responsibilities
- Maintenance contracts and plans
- Drawings, blueprints, previous reports

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### **Information Needed by the Reserve Analyst**

- Current amount in the reserve fund (balance sheet)
- Budgeted current assessment for reserves (budget)
- Recently completed projects funded through reserves
- Planned projects to be funded through reserves
- Concerns to be addressed during study

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### Common Challenges in Preparing for the Reserve Study

- No history of previous projects, timing, and costs
- Ambiguous allocation of maintenance, repair, replacement responsibilities
- Conflicting objectives
- Distinguishing reserve and operating budget items

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### List of Reserve Components

- Capital items
- Large projects that do not occur every year
- Small projects not included
- Items funded through the operating budget not included

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### Physical Inspection

- Person knowledgeable about the property should accompany the reserve analyst
- Inspect **all** common areas
- Inspect representative unit
- Challenges in inspecting roofs
- Challenges in inspecting balconies and decks

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**Cost Estimates**

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- Best information is cost history from the property
- Reference sources
- Contractor estimates
- Phased projects
- Design and project management costs

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**Service Lives**

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- Best information is property history
- Reference sources

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**Funding Analysis –  
Calculation Methods**

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- Component Method
- Accrued Value
- Baseline Funding Cash Flow
- Threshold Funding Cash Flow

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**Component Method**

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- ***Straight Line Method***
- Assessment = cost / service life
- Example: \$10,000 replacement cost with 10-year service life, assessment = \$1,000 per year
- Add assessments for all components for total annual assessment

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**Accrued value**

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- Similar to **component method**
- Accrued fund balance for each component is: (replacement cost/service life) \* years in service
- Example, \$10,000 replacement cost with 10 year service life, assessment = \$1,000 per year, in third year of service, the fund balance for that component should be \$3,000
- Add accrued values for all components
- Percent funded is: actual fund balance/total calculated accrued value

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**Baseline Funding – Cash Flow**

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- Use cost estimates and service lives to generate projected total costs by year.
- Select a study period.
- Start with current assessment and current fund balance, calculate a stream of assessments that will fund all costs during the study period.

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### Threshold Funding - Cash Flow

- Use cost estimates and service lives to generate projected total costs by year.
- Select a study period.
- Start with current assessment and current fund balance, calculate a stream of assessments that will fund all costs and maintain a specified minimum fund balance during the study period.

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### Funding Methods - Comments

- **Component method** – not often used.
- **Accrued value** – the method favored by the CICB guidelines, but is almost never used because it requires large reserve fund balances to be fully funded.
- **Baseline cash flow** – most commonly used method.
- **Threshold cash flow** – second most commonly used method.

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### What About Inflation?

- Inflation can be incorporated into any of the funding analysis methods.
- Including inflation makes the numbers larger.
- Strongly recommended to include inflation.
- The assumed inflation rate is *not* critical, provided periodic reviews are done to update plan as circumstances change..

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## Management and Board Review

- Check financial assumptions.
- Check for obvious errors.
- Is the plan understandable?
- Does the plan meet community objectives?
- Keep in draft until there is a consensus to accept the report.

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## Communicating the Plan

CICB Guidelines include a template for a one-page summary that can be used in resale disclosure and for sharing the reserve plan with the community.

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## Architectural Review

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**Belmont Glen: The Facts**

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**The Seasonal/Holiday Decorations Rule**

- Timing: Decorations may be displayed and removed on the following schedule

Holiday	Install Date	Remove Date
Halloween	October 1	November 5
Thanksgiving	1 <sup>st</sup> Saturday in Nov	December 7
Winter Holidays	Sat. after Thanksgiving	January 7
4 <sup>th</sup> of July	July 1	July 15

Diwali gets 15 days, with specific dates determined each year.

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**Belmont Glen: The Facts**

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**The Seasonal/Holiday Decorations Rule**

- If the holiday is not listed, decorations must be approved by Association architectural review board.
- Operation: Lights must be turned off no later than midnight each evening.

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**Belmont Glen: The Issue**

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***Is there authority for the rule?***

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**Belmont Glen: The Decision**

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- No!
- Covenants Considered
  - Exterior Lighting
  - Nuisance
  - Design Control
  - General Rule-Making

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**Opinion Nuances**

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- Reliance on the **Restatement of Property**
  - What is the *Restatement*?
  - Section 6.7 – Power to Adopt Rules Governing Use of Property
  - Section 6.9 – Design-Control Powers
- Latin Phrases & Contract Interpretation
  - Contract Interpretation Principles
  - *Ejusdem Generis*
  - *Noscitur a sociis*

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**Impact on Architectural Review**

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- Strict Construction
- *Express* vs. *Implied* Design-Control

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**Recommendations**

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- Review design standards
- Confirm authority with legal counsel
- Pursue compliance carefully – confirm insurance coverage
- Consider amending recorded documents

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**Recodification Cross-Reference Chart**  
**Virginia Condominium Act**

Former Section	New Section	Caption
§ 55-79.39	§ 55.1-1901	Application and construction of chapter
§ 55-79.40	§ 55.1-1900	Definitions
§ 55-79.41	§ 55.1-1902	Variation by agreement
§ 55-79.41:1	§ 55.1-1903	Separate assessments, titles, and taxation
§ 55-79.42	§ 55.1-1904	Association charges
§ 55-79.43	§ 55.1-1905	Local ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations
§ 55-79.44	§ 55.1-1906	Eminent domain
§ 55-79.45	§ 55.1-1907	How condominium may be created
§ 55-79.46	§ 55.1-1908	Release of liens
§ 55-79.47	§ 55.1-1909	Description of condominium units
§ 55-79.48	§ 55.1-1910	Execution of condominium
§ 55-79.49	§ 55.1-1911	Recordation of condominium instruments
§ 55-79.50	§ 55.1-1912	Construction of condominium instruments
§ 55-79.51	§ 55.1-1913	Complementarity of condominium instruments; controlling construction
§ 55-79.52	§ 55.1-1914	Validity of condominium instruments; discrimination prohibited
§ 55-79.53	§ 55.1-1915	Compliance with condominium instruments
§ 55-79.54	§ 55.1-1916	Contents of declaration
§ 55-79.55	§ 55.1-1917	Allocation of interests in the common elements
§ 55-79.56	§ 55.1-1918	Reallocation of interests in common elements
§ 55-79.57	§ 55.1-1919	Assignments of limited common elements; conversion to common element
§ 55-79.58	§ 55.1-1920	Contents of plats and plans
§ 55-79.58:1	§ 55.1-1921	Bond to insure completion of improvements
§ 55-79.59	§ 55.1-1922	Preliminary recordation of plats and plans
§ 55-79.60	§ 55.1-1923	Easement for encroachments
§ 55-79.61	§ 55.1-1924	Conversion of convertible lands
§ 55-79.62	§ 55.1-1925	Conversion of convertible spaces
§ 55-79.63	§ 55.1-1926	Expansion of condominium

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Former Section	New Section	Caption
§ 55-79.64	§ 55.1-1927	Contraction of condominium
§ 55-79.65	§ 55.1-1928	Easement to facilitate conversion and expansion
§ 55-79.66	§ 55.1-1929	Easement to facilitate sales
§ 55-79.67	§ 55.1-1930	Declarant's obligation to complete and restore
§ 55-79.68	§ 55.1-1931	Alterations within units
§ 55-79.69	§ 55.1-1932	Relocation of boundaries between units
§ 55-79.70	§ 55.1-1933	Subdivision of units
§ 55-79.71	§ 55.1-1934	Amendment of condominium instruments
§ 55-79.71:1	§ 55.1-1935	Use of technology
§ 55-79.71:2	§ 55.1-1936	Merger or consolidation of condominiums; procedure
§ 55-79.72		
§ 55-79.72:1	§ 55.1-1937	Termination of condominium
§ 55-79.72:2	§ 55.1-1938	Rights of mortgages
§ 55-79.72:3	§ 55.1-1939	Statement of unit owner rights
§ 55-79.73	§ 55.1-1940	Bylaws to be recorded with declaration; contents; unit owners' association; executive board; amendment of bylaws
§ 55-79.73:1	§ 55.1-1941	Amendment to condominium instruments; consent of mortgagee
§ 55-79.73:2	§ 55.1-1942	Reformation of declaration; judicial procedure
§ 55-79.74	§ 55.1-1943	Control of condominium by declarant
§ 55-79.74:01	§ 55.1-1944	Deposit of funds
§ 55-79.74:1	§ 55.1-1945	Books, minutes, and records; inspection
§ 55-79.74:2	§ 55.1-1946	Management office
§ 55-79.74:3	§ 55.1-1947	Transfer of special declarant rights
§ 55-79.74:4	§ 55.1-1948	Declarants not succeeding to special declaran rights
§ 55-79.75	§ 55.1-1949	Meetings of unit owners' association and executive board
§ 55-79.75:1	§ 55.1-1950	Distribution of information by members
§ 55-79.75:2	§ 55.1-1951	Display of the flag of the United States; necessary supporting structures; affirmative defense
§ 55-79.76	§ 55.1-1952	Meetings of unit owners' associations and executive board; quorums
§ 55-79.77	§ 55.1-1953	Meetings of unit owners' associations and executive board; voting be unit owners; proxies

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Former Section	New Section	Caption
§ 55-79.78	§ 55.1-1954	Officers
§ 55-79.79	§ 55.1-1955	Upkeep of condominium; warranty against structural defects; statute of limitations for warranty; warranty review committee
§ 55-79.80	§ 55.1-1956	Control of common elements
§ 55-79.80:01	§ 55.1-1957	Common elements; notice of pesticide application
§ 55-79.80:1	§ 55.1-1958	Tort and contract liability; judgment lien
§ 55-79.80:2	§ 55.1-1959	Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules
§ 55-79.80:3	§ 55.1-1960	Limitation of occupancy of a unit
§ 55-79.81	§ 55.1-1963	Insurance
§ 55-79.82		
§ 55-79.83	§ 55.1-1964	Liability for common expenses; late fees
§ 55-79.83:1	§ 55.1-1965	Reserves for capital components
§ 55-79.84	§ 55.1-1966	Lien for assessments
§ 55-79.84:01	§ 55.1-1967	Notice of sale under deed of trust
§ 55-79.84:1	§ 55.1-1968	Bond to be posted by declarant
§ 55-79.85	§ 55.1-1969	Restraints on alienation
§ 55-79.86	§ 55.1-1970	Common interest Community Board
§ 55-79.87	§ 55.1-1972	Exemptions from certain provisions of article
§ 55-79.87:1	§ 55.1-1973	Rental of units
§ 55-79.88	§ 55.1-1974	Limitations of dispositions of units
§ 55-79.89	§ 55.1-1975	Application for registration; fee
§ 55-79.90	§ 55.1-1976	Public offering statement; condominium securities
§ 55-79.91	§ 55.1-1977	Inquiry and examination
§ 55-79.92	§ 55.1-1978	Notice of filing and registration
§ 55-79.93	§ 55.1-1979	Annual report by declarant
§ 55-79.93:1	§ 55.1-1980	Annual report by unit owners' association
§ 55-79.93:2	§ 55.1-1981	Termination of registration
§ 55-79.94	§ 55.1-1982	Conversion condominiums; special provisions
§ 55-79.95	§ 55.1-1983	Escrow of deposits
§ 55-79.96	§ 55.1-1984	Declarant to deliver declaration to purchaser

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Former Section	New Section	Caption
§ 55-79.98	§ 55.1-1971	General powers and duties of the Common Interest Community Board
§ 55-79.99	§ 55.1-1985	Investigations and proceedings
§ 55-79.100	§ 55.1-1986	Case and desist orders
§ 55-79.101	§ 55.1-1987	Revocation of registration
§ 55-79.102	§ 55.1-1988	Judicial review
§ 55-79.103	§ 55.1-1989	Penalties
§ 55-79.97	§ 55.1-1990	Resale by purchaser; contract disclosure; right of cancellation
	§ 55.1-1991	Contents of resale certificate; delivery
	§ 55.1-1995	Exceptions to disclosure requirements
	§ 55.1-1961	Use of for sale sign in connection with resale
	§ 55.1-1962	Designation of authorized representative
§ 55-79.97:1	§ 55.1-1992	Fees for resale certificate
§ 55-79.97:2	§ 55.1-1993	Properties subject to more than one declaration
§ 55-79.97:3	§ 55.1-1994	Requests by settlement agents

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**Recodification Cross-Reference Chart**  
**Virginia Property Owners' Association Act**

Former Section	New Section	Caption
§ 55-508	§ 55.1-1801	Applicability
§ 55-509	§ 55.1-1800	Definitions
§ 55-509.1	§ 55.1-1802	Developer to register and file annual report; payment of real estate taxes attributable to the common area
§ 55-509.1:1	§ 55.1-1803	Limitation on certain contracts and leases by declarant
§ 55-509.2	§ 55.1-1804	Documents to be provided by declarant upon transfer of control
§ 55-509.3	§ 55.1-1805	Association charges
§ 55-509.3:1	§ 55.1-1806	Rental of lots
§ 55-509.3:2	§ 55.1-1807	Statement of lot owner rights
§ 55-509.4	§ 55.1-1808	Contract disclosure statement; right of cancellation
§ 55-509.4(J)(1)	§ 55.1-1822	Use of for sale signs in connection with sale
§ 55-509.4(J)(2)	§ 55.1-1823	Designation of authorized representative
§ 55-509.5	§ 55.1-1809	Contents of association disclosure packet; delivery of packet
§ 55-509.6	§ 55.1-1810	Fees for disclosure packet; professionally managed associations
§ 55-509.7	§ 55.1-1811	Fees for disclosure packets; associations not professionally managed
§ 55-509.8	§ 55.1-1812	Properties subject to more than one declaration
§ 55-509.9	§ 55.1-1813	Requests by settlement agents
§ 55-509.10	§ 55.1-1814	Exceptions to disclosure requirements
§ 55-510	§ 55.1-1815	Access to association records; association meetings; notice
§ 55-510.1	§ 55.1-1816	Meetings of the board of directors
§ 55-510.2	§ 55.1-1817	Distribution of information by members
§ 55-510.3	§ 55.1-1818	Common areas; notice of pesticide application
§ 55-511		
§ 55-513	§ 55.1-1819	Adoption and enforcement of rules
§ 55-513.1	§ 55.1-1820	Display of the flag of the United States; necessary supporting structures; affirmative defense

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Former Section	New Section	Caption
§ 55-513.2	§ 55.1-1821	Home-based businesses permitted; compliance with local ordinances
§ 55-513.3	§ 55.1-1824	Assessments; late fees
§ 55-514	§ 55.1-1825	Authority to levy special assessments
§ 55-514.1	§ 55.1-1826	Reserves for capital components
§ 55-514.2	§ 55.1-1827	Deposit of funds; fidelity bond
§ 55-515	§ 55.1-1828	Compliance with declaration
§ 55-515.1	§ 55.1-1829	Amendment to declaration and bylaws; consent of mortgage
§ 55-50815.2	§ 55.1-1830	Validity of declaration; corrective amendments
§ 55-515.2:1	§ 55.1-1831	Reformation of declaration; judicial procedure
§ 55-515.3	§ 55.1-1832	Use of technology
§ 55-516	§ 55.1-1833	Lien for assessments
§ 55-516.01	§ 55.1-1834	Notice of sale under deed of trust
§ 55-516.1	§ 55.1-1835	Annual report by association
§ 55-516.2	§ 55.1-1836	Condemnation of common area; procedure

# MERCERTRIGIANI

## ***RESERVE STUDY QUICK REFERENCE***

### **What is a Reserve Study?**

Capital budget planning tool used to determine the physical status and repair or replacement cost of capital components and an analysis of an association's funding capacity to maintain, repair and replace capital components.<sup>1</sup>

### **Governing Statutes**

- Property Owners' Association Act – Section 55.1-1826
- Condominium Act – Section 55.1-1965

### **Statutory Requirements**

#### *Reserve Study*

- Conduct a reserve study “*at least once every five years.*”
- Review reserve study results “*at least annually to determine if reserves are sufficient.*”
- Make any adjustments deemed necessary to maintain reserves

#### *Disclosures*

- Statement 1 – Describing procedures for estimate and accumulation of cash reserves pursuant to reserve study.
- Statement 2 – Amount of reserves recommended by reserve study.
- Statement 3 – Amount of current cash for reserves.

### **CICB Reserve Study Guidelines**

- 2019 General Assembly legislation requiring Common Interest Community Board to “*develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.*”
- Available on Common Interest Community Board website or use the QR Code below!



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<sup>1</sup> *Guidelines for the Development of Reserve Studies for Capital Components*, Adopted by the Common Interest Community Board September 5, 2019.

# MERCERTRIGIANI

## *SAINANI V. BELMONT GLEN HOMEOWNERS ASSOCIATION, INC.* CASE SUMMARY

In *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.

The rule at issue established specific time periods during which seasonal and holiday decorations could be displayed and required homeowners to apply to the Association architectural review board (“ARB”) 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 analyzed four covenants relied upon by the Association in evaluating whether the Association had authority to adopt the seasonal decorations rule.

*Exterior Lighting* – The first covenant relied upon by the Association for rule-making authority prohibited exterior lighting directed outside lot boundaries and exterior lighting causing “adverse visual impact to adjacent lots, whether by location, wattage or other features.” Noting that the seasonal decorations rule did *not* mention “adverse visual impact” or regulate “location, wattage or other features,” the Court determined the rule exceeded authority established in the declaration by the exterior lighting covenant.<sup>1</sup>

*ARB Approval* – The second covenant the Association relied upon prohibited homeowners from modifying or altering property without application to and approval of the ARB. The Court determined that the ARB approval requirement also did not establish Association authority to adopt the seasonal decorations rule on two bases. First, the Court suggested that restrictions on exterior lighting installations may only be regulated on the bases provided in the exterior lighting covenant (i.e., adverse visual impact, location, wattage or other features). Second, the Court determined that ARB approval is only required for *permanent* changes and that seasonal decorations are merely temporary in nature.

*General Appearance Regulation* – The Association also relied on a covenant providing the ARB with general authority to “regulate the external design and appearance of the Property ... so as to preserve and enhance property values and to maintain harmonious relationships among structures and the natural vegetation and topography.” Following a rule of construction requiring interpretation of the covenant “from a reading of the whole instrument,” the Court concluded that the apparently broad authority established by this covenant is limited by other provisions of the declaration – the ARB only has authority to regulate permanent modifications or alterations of any lot.

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<sup>1</sup> The Court also rejected an Association argument that more general language prefacing the exterior lighting covenant prohibiting “noxious or offensive activity” expanded Board authority, following general rules of construction that the more specific exterior lighting restriction limited the application of the more general prohibition on nuisance activity.

Significantly, the Court went further to address whether design-control powers include an *implied* power to impose design controls for aesthetic purposes. While *express* design-control powers established by statute or in recorded covenants are enforceable, the Court limited the scope of *implied* powers to “governing or protecting common property and preventing ‘nuisance-like activities’ on individually owned property.” In restricting implied authority, the Court commented that implied design-control powers create risks for property owners, including creating uncertainty in how design-control standards will be applied.

*General Rule-Making Authority* – Finally, the Court rejected an Association argument that authority to adopt the seasonal decorations rule was found in a covenant granting the Association broad rule-making authority. The Court determined that the rule-making authority covenant requires that the rule be in furtherance of other restrictive covenants. Because no other covenant authorized the regulation of seasonal decorations, the Association was without authority to do so.

### CONCLUSIONS AND RECOMMENDATIONS

While the *Belmont Glen* decision is based on particular facts and circumstances, the trend in Virginia continues to be one of strict construction – common interest communities 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. Care should be taken to review association rules and regulations, particularly any architectural guidelines, to ensure the rules withstand scrutiny in light of the *Belmont Glen* decision.

# 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 55.1-1819<sup>1</sup> 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

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

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.

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.