

CHANGES TO VIRGINIA'S RESALE DISCLOSURE PACKETS REQUIREMENTS

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VIRGINIA COMMUNITY ASSOCIATIONS*

The General Assembly again during the 2008 Session made substantial revisions to the Condominium Act provisions concerning certificates for resale and the Property Owners' Association Act provisions concerning association disclosure packets. Issues in the implementation of 2007 amendments prompted legislators to focus again on the fee amount and the manner of delivery of the resale certificate and association disclosure packet.

The 2008 changes, effective July 1, 2008, affect communities managed by management firms and communities with management staff and include new methods for delivery, revamped fee structure, and additional disclosure statements. The resale provisions remain unchanged for self-managed communities.

Delivery – The resale certificate or the association disclosure packet must be delivered in the format requested by the seller or the seller's agent – whether hard copy or electronic format. The request must be in writing and provide complete contact information for the parties to whom the resale certificate or association disclosure packet is to be delivered. The parties may request a hard copy in person at the principal place of business of the association. No extra fees may be charged for the use of an electronic network through which the disclosures may be provided. Also, two copies – whether electronic or hard copy – must be provided to the requesting parties.

Fees – The association and management firm may charge a fee for inspection of the unit or the lot not to exceed \$100. If the resale certificate or association disclosure packet is in paper format, the fee may not exceed \$150; if the resale certificate or association disclosure packet is in electronic format, the fee may not exceed \$125. At the option of the seller or the seller's agent, the disclosures may be delivered in expedited format for additional fee of \$50 – within five business days. A fee of \$25 may be charged for an additional hard copy. Delivery charges are a direct pass through of actual costs incurred. The statutes are also amended to provide for a post-closing fee to the purchaser, collected at settlement in an amount not to exceed \$50.

The fee schedule for preparation of the certificate of resale or association disclosure packet must be published. Fees cannot be collected at the time the request is made; fees are collected at settlement, paid out of settlement proceeds. The seller is responsible for the cost of the certificate or packet. If settlement does not occur within 90 days of delivery or funds are not collected at settlement, the fee becomes a charge

against the property and is collected like any other assessment – from the unit or lot owner. The fee for preparation of the resale certificate or association disclosure packet may be adjusted every five years based upon annual increases in the Consumer Price Index (all urban consumers).

Updates – The purchaser or seller may request an update for any resale certificate or association disclosure packet issued in the preceding 12 months. The association or the management agent has 10 days to deliver the update, which must include a copy of the original. A settlement agent may request a financial update that must be delivered within three business days. The fee for the financial update may not exceed \$50.00; the inspection fee for an update is \$100.00.

Self-Managed Property Owners Associations – Those property owners associations which do not have professional management (that includes paid staff) may only charge the actual cost of preparation of the association disclosure packet with a fee not to exceed \$100.00. The provisions of these statutes otherwise remain unchanged, allowing copy charges to be only \$.10 per page. Charges for an update are not to exceed \$50.00.

New disclosure statements – Two new disclosure statements are added to the certificate for resale and the association disclosure packet. The resale certificate and association disclosure packet must include a disclosure of any known post-closing fee charged by the management firm. The certificate and packet must now include copies of approved minutes of the board of directors or association meetings for the preceding six calendar months.

Penalties – As both the Condominium Act and the Property Owners' Association Act currently provide, the association is bound by the statements in the certificate for resale and association disclosure packet. Failure to provide the certificate or disclosure packet substantially in the form required by the statutes remains a waiver of any claim for unpaid assessments or violations of the condominium instruments or governing documents. However, the preparer of the certificate or disclosure packet may now be responsible to the seller for actual damages sustained in an amount not to exceed \$1,000.00. The limit is currently \$500.00.

*This summary is provided for informational purposes only. It should not be construed as legal advice. **MercerTrigiani** has also prepared a 2008 Legislative [Checklist](#) for Community Associations.*