

MERCERTRIGIANI

AUTHORITY TO ASSESS VIOLATION CHARGES

Three Virginia cases have raised questions and concerns about the authority of common interest community associations to enforce the governing documents and rules and regulations adopted by the Board.

Shadowood Condominium Association v. Fairfax County Redevelopment and Housing Authority case involved a challenge to the authority of a Fairfax County condominium unit owners association to impose and collect charges for rule violations. The association relied upon Section 55-79.80:2 of the Virginia Condominium Act in imposing charges. The Fairfax Circuit Court ruled that the association did not have authority to impose and collect charges – absent specific authority in the recorded condominium instruments. On appeal, the Virginia Supreme Court affirmed the lower court’s decision as described in detail below.

The Fairfax Circuit Court, in a separate case involving a townhome community, *Olde Belhaven*, issued a similar ruling when a lot owner challenged the authority of a property owners association to impose and collect charges under Section 55-513.B. of the Virginia Property Owners’ Association Act which is almost identical to Section 55-79.80:2 of the Condominium Act. *Farran v. Olde Belhaven Towne Owners Association*, 80 Va. Cir 508 (Fairfax 2010). The *Olde Belhaven* decision was not appealed the Virginia Supreme Court.

In September 2011, the Loudoun County Circuit Court in *Lee’s Crossing Homeowners’ Association v. Linzie Zinone* (Loudoun Cir. Ct. Case No. 50272) interpreted Section 55-513.B of the Virginia Property Owners’ Association Act to provide a board with the authority to adopt rules permitting the board to impose and collect monetary charges regardless of specific authority in the recorded governing documents. The Loudoun County Circuit Court specifically disagreed with the ruling in the Fairfax Circuit Court case described above. We understand that this case may also be appealed to the Virginia Supreme Court once the final order has been entered.

The Virginia Supreme Court heard the *Shadowood* appeal in June 2012 and recently issued an order – an unpublished decision – affirming the ruling of the Fairfax Circuit Court. In a footnote in the ruling 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 ruling of the Supreme Court does offer insight on how the Virginia Supreme Court may interpret Section 55-79.80:2 of the Virginia Condominium Act and Section 55-513.B of the Virginia Property Owners’ Association Act in future cases.

Strictly interpreted, this ruling of the Court leads to a conclusion that an association may impose sanctions *only* when the recorded governing documents expressly authorize an association to assess monetary charges and suspend member privileges or when the governing documents expressly allow the association to adopt rules or regulations which impose monetary charges and suspend member privileges.