

MERCERTRIGIANI

ALTERNATIVE LEGAL ACTION FOR ENFORCEMENT OF COVENANT VIOLATIONS

In Virginia, a common interest community association seeking to enforce covenants, rules and regulations may commence legal proceedings in either circuit court or general district court. Because litigation is unpredictable and a costly proposition, litigation should always be the last resort in conflict resolution.

CIRCUIT COURT

The circuit court is the court of general jurisdiction in Virginia. Circuit courts are given broad authority to award injunctive relief and, until recently, were the only trial courts that could direct a unit owner to correct covenant violations. Circuit courts have established rules providing for discovery, motions, and other pre-trial procedural requirements. If the unit owner chooses to contest the matter, proceedings in circuit court will likely require between six months and one year before a final decision is granted. Trial is likely to last a full day. Accordingly, litigation in circuit court is generally more expensive and takes longer than proceeding in general district court.

After judgment is entered, the parties MAY appeal an unfavorable decision to the Virginia Supreme Court. Several steps must be taken in appealing a circuit court decision. Appeals are not always granted by the Virginia Supreme Court. An appeal to the Supreme Court requires significant briefing and substantially increases the expenses associated with litigating a matter.

GENERAL DISTRICT COURT

Effective July 1, 2011, the Virginia legislature amended Section 55-79.80:2 of the Virginia Condominium Act and Section 55-513 of the Virginia Property Owners' Association Act to give general district courts authority to order a unit owner to abate a violation of association covenants, rules and regulations. Before the Acts were amended in 2011, general district court authority was limited to issuance of monetary awards. Significant amendments were adopted in the 2014 session of the General Assembly, adding additional notice and cure rights as prerequisites.

In order to proceed under this statutory authority, the Association must give the unit owner an opportunity to correct the violation and an opportunity for a hearing before an association tribunal. If a general district court action is contested, trial will be scheduled. This takes approximately six months after the legal action is filed. Trial would be expected to last only one-half day. Discovery and pre-trial motions are limited in general district court, making legal proceedings in general district court generally faster and less expensive than circuit court.

Any judgment rendered by the general district court may be appealed to the circuit court and a new trial will be set in the circuit court. Trial in circuit court is considered *de novo*, meaning that the circuit court does not consider the decision of the general district court. As stated above, the decision of the circuit court may be appealed to the Virginia Supreme Court.