

MERCERTRIGIANI

GENERAL DISTRICT COURT ABATEMENT

Virginia common interest community associations have been met with growing challenges to authority to take action to ensure compliance with association governing documents and association rules and regulations. In response to zealous enforcement efforts and the perception that association leaders pursue rule enforcement in a punitive, mean spirited manner, a growing line of court decisions and tightening legislation have limited tried and true internal enforcement actions designed to achieve compliance without the necessity of legal action.

In 2011, the Virginia General Assembly enacted legislation that opened the door to seeking compliance judicially in the least costly and most efficient court - the general district courts. Section 55.1-1819.E¹ of the Virginia Property Owners' Association Act and Section 55.1-1959.D² of the Virginia Condominium Act provide that an association may seek enforcement of rule violations and failure to pay assessments through the general district court. In 2014, the General Assembly refined the authority further, adding procedural due process requirements as prerequisites to initiating legal action: notice, opportunity to cure, and a hearing.

Notice. Before taking action, an association must provide, by mail, written notice of the violation. The violation should be fully described (including date, time and location) with reference to specific provisions of the governing documents or the rules that appear to have been violated.

Opportunity to Cure. The notice must include a reasonable opportunity to cure the violation. The time frame given to address the condition causing concern will vary depending upon the nature of the condition and the fix. Associations have some flexibility based on facts and circumstances, but the timeframe for corrective action must be reasonable.

Hearing before Board of Directors. If the violation persists after giving notice and the opportunity to cure has expired, the owner must be provided an opportunity to be heard before the Board (or other tribunal) and to be represented by legal counsel. The Board, or other appropriate committee designated to serve as a reviewer of violations and complaints, presides in such hearings.

Notice of the hearing, including actions that may be taken by the association (e.g., initiation of action in general district court), must be hand delivered or mailed by registered or certified mail to the owner at the address of record with the association at least fourteen days prior to the hearing.

¹ Prior to the recodification of Title 55 which became effective on October 1, 2019, Section 55-513 of the Virginia Property Owners' Association Act governed rule compliance procedures.

² Prior to the recodification of Title 55 which became effective on October 1, 2019, Section 55-79.80:2 of the Virginia Condominium Act governed rule compliance procedures.

If an owner does not respond to the notice of hearing or fails to appear at the appointed date and time for the hearing, the hearing may proceed in the absence of the owner. Within seven days of the hearing, a notice of hearing result must be hand delivered or mailed by registered or certified mail, return receipt requested, to the owner at the address of record with the association.

GENERAL DISTRICT COURT

Warrant in Debt. In order to begin the action in general district court, a warrant in debt (“warrant”), or a lawsuit, is filed in the clerk’s office of the general district court for the city or county in which the community is located. The warrant requests the court to make a finding that the owner has violated the governing documents and association rules and regulations.

If a violation is determined, the association also asks that the court direct the owner to take corrective action within a specified time frame, appropriate to the circumstances. And if the owner fails to take corrective action, the court may authorize the association to take corrective action and also to collect the costs of the action as well as award the association court costs and attorneys’ fees.

The suit may include a claim for past due assessments, as well as violation charges, if authorized. An account statement detailing the past due assessments and other past due charges is attached to the warrant in addition to an affidavit describing the violation. If the suit seeks relief for architectural violations, a notice of violation, notice of hearing, and hearing result letter will also be attached to the warrant. A copy of relevant bylaw or the declaration provisions is also attached to the warrant to establish association authority to assess, the obligation to pay assessments, and if applicable, association authority to regulate architectural violations.

Service of Process. Once the warrant is prepared, the warrant is filed in the clerk’s office of the general district court. Accompanying the warrant is a request for the sheriff to serve a copy of the warrant on the owner at the address of record with the association. Service of process of the warrant provides the owner with notice of the court hearing and notice that legal action is being initiated against the owner and the scheduled date when the matter will be reviewed by the court.

Service of process is effected by the sheriff personally handing a copy of the warrant to the owner, personally handing a copy of the warrant to a member of the owner’s household who is over 16 and not a “temporary sojourner or guest,” or posting a copy of the warrant on the front door of the usual place of abode (“posting”). If service is effected by posting, a copy of the warrant must be mailed to the owner at the same address. A certificate of service or proof of service must be filed in the clerk’s office of the general district court.

Hearing. Once notified of the hearing before the court, the owner may appear at the hearing and agree that the debt is owed or agree an architectural violation exists, in which case the judge enters a consent judgment against the owner. The owner may also appear at the hearing and dispute the debt or the allegation of an architectural violation, in which case the judge sets a trial date.

When a trial date is set, the judge also orders a bill of particulars to be filed to more fully outline the allegations against the owner. The owner is ordered to file an answer and grounds of defense. An answer and grounds of defense gives the owner the opportunity to state why the owner disputes the debt or alleged architectural violation and helps our office prepare for trial. If the owner does not appear at the court hearing and has been properly served with notice of the hearing, the judge will grant a default judgment, and judgment is entered without a trial.

Judgment. Once judgment is entered, either by consent, default, or after a trial, our office records the judgment among the land records and begins actions to collect the debt or remedy the architectural violation. When the suit involves an architectural violation, the judge may also enter an order granting permission for the association to enter the lot or unit to remedy the violation, if the owner fails to take action ordered by the Court. The judgment may also include an award of costs and attorneys' fees.

CONCLUSION

While pursuing abatement of violations through the general district court is generally more efficient than pursuing legal action in circuit court, the prerequisite process must be followed and details must be given attention, making the process complex. The steps in the process described above, include due process procedures, preparation and filing of a warrant, service of process, a hearing, a trial (in some instances), and post-judgment enforcement efforts.

Each warrant is given a procedural review and both subjective and substantive review by a judge. This review may result in an interpretation of the governing documents by the judge that leads to a finding that a violation has not occurred. Additionally, there is no guarantee that the association will recover, dollar for dollar, attorneys' fees and costs incurred in pursuing litigation because the amount of the award is in the discretion of the judge hearing the matter. Enforcement of a judgment may also present practical challenges and there is a risk of appeal of a favorable judgment to the circuit court.

Even with the challenge presented, the abatement procedure offers a new alternative for associations in ensuring compliance with governing documents and rules and regulations.