

Ray Womack

From: Wagner, Calvin F. [Calvin.Wagner@fairfaxcounty.gov]
Sent: Tuesday, October 16, 2007 8:32 AM
To: Ray Womack
Subject: RE: Engineering report

Mr. Womack: Thank you for your inquiry. There is nothing that I can add to what your attorney has already stated in the two attachments. I believe Mr. Thomas is absolutely correct in his reference and interpretation of § 55-79.74:1 "Books, minutes and records; inspection" of the Virginia Condominium Act.

I perceive only two reasons for the board's refusal to provide the requested report: 1) ignorance and misunderstanding of the lawful requirements and provisions of the Condo Act, and 2) wilful cover-up of the developer's potential mistakes, omissions, violations. I even question the authority of the board to inspect the private units after county approval, issuance of a residency permit, and sale to private ownership unless a structural flaw/problem is discovered and/or known. There is no lawful requirement for such "engineering study" (which is quite different from the lawfully required Reserve Study (see § 55-79.83:1 "Reserves for capital components"); the reserve study has nothing to do with the defined and privately owned residential units. Hopefully upon receiving Mr. Thomas' letter of October 1, 2007, the association's legal counsel will advise the board of its proper responsibilities, authorities and limitations thereto.

Beyond permitting, inspections, approval, and issuance of occupancy permits during the construction process, the County has no legal standing in the internal governance affairs of private homeowner and condominium associations. In the past, the Office of the Commonwealth's Attorney addressed this very issue in writing as follows:

"Enforcement of homeowner and community associations' responsibilities, covenants, rules and regulations are generally matters for the court, since they involve the enforcement of a (membership) contract under civil laws. This means that intervention is not normally within the purview of the state or local governments."

I would hope that the board of directors sees the error of its ways and provides the requested engineering report that, incidentally, was paid for by the members' assessments. If the board still refuses to comply, your alternative is to take legal action in court.

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